

SIXTIETH DAY

Continued

(Friday, April 25, 1941)

The Senate met at 9:30 o'clock a. m. and was called to order by the President.

Message from the House

The Reading Clerk of the House was recognized by the President to present the following message:

Hall of the House of Representatives,
Austin, Texas,
April 25, 1941.

Hon. Coke R. Stevenson, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has refused to adopt the Conference Committee report on H. B. No. 405 and requests the appointment of a new Conference Committee.

The House has passed the following bill:

S. B. No. 280, A bill to be entitled "An Act authorizing any school district having an indebtedness in excess of six (6%) per cent of its assessed valuation in which is located a school building which shall have been condemned by certain authorities, to levy a tax of not to exceed seventy-five (75c) cents on the One Hundred (\$100.00) Dollars valuation for the purchase, construction, repair or equipment of school buildings and the payment of principal and interest on bonds issued for such purpose; providing that the aggregate amount of such bonds at the time of issuance shall never reach an amount such that a tax of seventy-five (75c) cents on the One Hundred (\$100.00) Dollars valuation will not pay interest and principal as they accrue and mature; providing that the amount of maintenance tax and the amount of bond tax together shall never exceed One and 25/100 (\$1.25) Dollars on the One Hundred (\$100.00) Dollars valuation; providing that the bond tax shall operate to reduce the maintenance tax to the difference between the rate of bond tax and One and 25/100 (\$1.25) Dollars; providing that such tax shall not be levied and such bonds shall not be issued until authorized by an election; enacting other provisions relating to the subject hereof; and declaring an emergency."

Respectfully submitted,

E. R. LINDLEY,

Chief Clerk, House of Representatives.

Committee Substitute House Bill 8
on Passage to Third Reading

The Senate resumed consideration of the pending special order, same being C. S. H. B. No. 8, known as the omnibus tax bill, on its passage to third reading.

Senator Martin offered the following amendments to the bill:

(49)

Amend H. B. No. 8, Article XIV, Section 5, page 61 of the mimeographed bill, by inserting in line 9 after the word "permit" and in front of the word "the" the following language:

"and it shall be unlawful for any holder of a wholesale dealer's permit to pay for a retail dealer's permit, either directly or indirectly, or through rebates, or in any other manner, and any holder of a wholesale dealer's permit who violates this provision and any holder of a retail dealer's permit who permits a wholesale dealer to pay his permit fee, directly or indirectly, or in any manner in violation of this provision, shall be subject to the penalty of having his permit forfeited for a period of one year on a suit brought by the State of Texas in any district court in the county of the residence of the person or persons whose permit is sought to be forfeited."

(50)

Amend H. B. No. 8, Article XIV, Section 1, by striking out of said Article and Section, wherever they appear, the words and figures: "one-sixth (1/6) of one (1) cent," and insert in lieu thereof the following words and figures: "one-twelfth (1/12) of one cent."

(51)

Amend H. B. No. 3, page 56 of the mimeographed bill, by striking out the words and figures "five (5) cents" in sub-section (b), Section 1, Article XIV, and insert in lieu thereof the words and figures: "three (3) cents."

Senator Aikin offered the following substitute for amendments 49, 50 and 51 by Senator Martin:

(52)

Amend committee substitute for H. B. No. 8, by striking out all of Article XIV.

AIKIN,
BROWNLEE,
YORK,
METCALFE,

CHADICK,
FAIN,
LOVELADY,
GRAVES,
SULAK,
ISELL,
HILL,
VICK,
COTTEN,
LEMENS,
KELLEY.

Mauritz
Moffett
Moore
Ramsey

Shivers
Smith
Weinert
Winfield

Paired

Senator Martin (present), who would vote yea with Senator Spears (absent), who would vote nay.

Senator Shivers offered the following substitute for the amendment (52) by Senator Aikin:

(53)

Amend Aikin amendment for Article XIV by substituting in lieu thereof the following:

"ARTICLE XIV

"Section 1. (a) The term 'person' shall for the purpose of this Article mean and include individuals, partnerships, firms, joint stock companies, trustees, receiverships, associations, and corporations.

"(b) Every person in this State engaged in the business of bottling soft drinks shall report on the twentieth (20th) of each month and pay to the Comptroller at his office in Austin, Texas, an occupation tax equal to two (2%) per cent of the gross amount received from said business during the calendar month next preceding. The said report shall be executed under oath on a form prescribed by the Comptroller.

"(c) The term 'bottling soft drinks' as used herein shall mean and include any and all beverages of whatsoever kind or description, whether carbonated or not, and whether manufactured with or without the use of syrup or flavor when such beverages are prepared for sale or use in bottles; such as, by way of inclusion and not by way of exclusion, soda water, ginger ale, deleware punch, nu-grape, coca-cola, lime-cola, pepsi-cola, R-C cola, Dr. Pepper, seven-up, soft cider, cordial, and any and all other bottled preparations commonly referred to as soft drinks, regardless of kind or description.

"(d) Every person in this State engaged in the business of making, blending, mixing, or compounding of soft drinks at soda fountains or similar places shall report on the

Senator Martin moved to table the substitute.

Yeas and nays were demanded, and the motion to table was lost by the following vote:

Yeas—13

Beck	Moore
Formby	Ramsey
Hazlewood	Shivers
Lanning	Smith
Martin	Weinert
Mauritz	Winfield
Moffett	

Nays—16

Aikin	Kelley
Brownlee	Lemens
Chadick	Lovelady
Cotten	Metcalf
Fain	Stone
Graves	Sulak
Hill	Vick
Isbell	York

Paired

Senator Van Zandt (present), who would vote yea with Senator Spears (absent), who would vote nay.

Question—Shall the substitute be adopted?

Yeas and nays were demanded, and the substitute for the amendments was adopted by the following vote:

Yeas—17

Aikin	Lemens
Brownlee	Lovelady
Chadick	Metcalf
Cotten	Stone
Fain	Sulak
Graves	Van Zandt
Hill	Vick
Isbell	York
Kelley	

Nays—12

Beck	Hazlewood
Formby	Lanning

twentieth (20th) of each month and pay to the Comptroller at his office in Austin, Texas, an occupation tax equal to two (2%) per cent of the gross amount received from said business during the calendar month next preceding. The said report shall be executed under oath on a form prescribed by the Comptroller.

"(e) Provided, that milk drinks, and unadulterated fruit drinks in their original state, used in hospitals or sold direct to school children on school premises, or sold through a school organization to school children on school premises, shall be exempt from the tax levied by this Article.

"Sec. 2. A complete record of the business transacted, together with any other information the Comptroller may require shall be kept by each person furnishing any service or performing any duty subject to said tax, which said records shall be kept for a period of two (2) years, open to the inspection of the Comptroller of Public Accounts or the Attorney General of this State, or their authorized representatives. The Comptroller shall have the authority to adopt rules and regulations for the enforcement of this Article and the collection of the tax levied herein.

"Sec. 3. If any person shall violate any provision of this Article, he shall forfeit to the State of Texas, as a penalty, the sum of not less than Twenty-five (\$25.00) Dollars, and not more than Five Hundred (\$500.00) Dollars for each violation, and each day's violation shall constitute a separate offense, and in addition thereto delinquent taxes shall draw a penalty equal to one (1%) per cent per month from due date. The State shall be secured for all taxes, penalties, interests and costs due by any person under the provisions of this Article by a preferred lien, first and prior to any and all other existing liens, contract or statutory, legal or equitable, and regardless of the time such lien originated upon all the property used by said person in his business.

"Sec. 4. If an Section, Sub-section, sentence, clause or phrase of this Article, is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Article. The Legislature hereby declares that it would have passed this Article and each Section, Sub-section, sentence, clause, and phrase

thereof irrespective of the fact that any one or more of the Sections, Sub-sections, sentences, clauses, or phrases be declared invalid or unconstitutional."

Senator Aikin moved to table the substitute.

Yeas and nays were demanded, and the motion to table was lost by the following vote:

Yeas—13

Aikin	Kelley
Brownlee	Lemens
Chadick	Metcalf
Cotten	Sulak
Fain	Vick
Graves	York
Isbell	

Nays—7

Beck	Moore
Formby	Ramsey
Hazlewood	Shivers
Hill	Smith
Lanning	Stone
Lovelady	Van Zandt
Martin	Weinert
Mauritz	Winfield
Moffett	

Absent—Excused

Spears

Question then recurring on the substitute, yeas and nays were demanded.

The substitute was adopted by the following vote:

Yeas—15

Beck	Ramsey
Hazlewood	Shivers
Lanning	Smith
Lovelady	Stone
Martin	Van Zandt
Mauritz	Weinert
Moffett	Winfield
Moore	

Nays—14

Aikin	Isbell
Brownlee	Kelley
Chadick	Lemens
Cotten	Metcalf
Fain	Sulak
Graves	Vick
Hill	York

Pa red

Senator Formby (present), who would vote yea with Senator Spears (absent), who would vote nay.

Senator Kelley offered the following amendment to the amendment (as substituted):

(54)

Amend Shivers amendment to Article XIV of the substitute for H. B. No. 8 as follows:

Amend Article XIV of the substitute for H. B. No. 8 by inserting a new paragraph, properly numbered and placed, to read as follows:

"Nothing in this article, or any Section thereof, shall authorize the levy or collection of any tax upon the processing, sale, use, consumption, handling or distribution of any drink composed wholly of pure, undiluted fruit juices, or a combination thereof, or of pure, undiluted vegetable juices, or a combination thereof."

Senator Aikin offered the following substitute for the amendment to the amendment:

(55)

Amend Shivers substitute by adding the following at the end of Section 4:

"Nothing herein shall be construed as levying any tax on any food product."

Senator Shivers moved to table the substitute.

Yeas and nays were demanded, and the motion to table prevailed by the following vote:

Yeas—16

Beck	Mauritz
Brownlee	Moore
Fain	Ramsey
Formby	Shivers
Isbell	Smith
Lanning	Van Zandt
Lovelady	Weinert
Martin	Winfield

Nays—12

Aikin	Metcalf
Chadick	Moffett
Cotten	Stone
Graves	Sulak
Hill	Vick
Lemens	York

Present—Not Voting

Hazlewood	Kelley
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Absent—Excused

Spears

The question then recurring on the adoption of amendment to the amendment, yeas and nays were demanded.

The amendment to the amendment was adopted by the following vote:

Yeas—24

Aikin	Lovelady
Brownlee	Martin
Cotten	Mauritz
Fain	Metcalf
Formby	Moffett
Graves	Ramsey
Hazlewood	Smith
Hill	Stone
Isbell	Sulak
Kelley	Van Zandt
Lanning	Winfield
Lemens	York

Nays—5

Beck	Vick
Moore	Weinert
Shivers	

Absent

Chadick

Absent—Excused

Spears

Senator Aikin offered the following amendment to the amendment:

(56)

Amend Shivers substitute by striking out the words and figures "2%" wherever they appear and insert in lieu thereof "1%."

Question—Shall the amendment to the amendment be adopted?

Motion to Recess

Senator Lanning moved that the Senate recess to 2:00 o'clock p. m. today.

The motion was lost by the following vote:

Yeas—13

Aikin	Mauritz
Graves	Metcalf
Hazlewood	Moffett
Isbell	Ramsey
Lanning	Stone
Lemens	Vick
Martin	

Nays—16

Beck	Fain
Brownlee	Formby
Cotten	Hill

Kelley	Sulak
Lovelady	Van Zandt
Moore	Weinert
Shivers	Winfield
Smith	York

Absent

Chadick

Absent—Excused

Spears

Message from the House

Mr. Worth Ware, a Clerk of the House was recognized by the President to present the following message:

Hall of the House of Representatives,
Austin, Texas,
April 25, 1941.

Hon. Coke R. Stevenson, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has passed the following bills:

H. B. No. 279, A bill to be entitled "An Act to amend Section 2 of S. B. No. 575, Acts of the Forty-second Legislature, Regular Session, approved April 31, 1931, being an Act to establish a system of public roads and bridges for Bexar County and granting certain powers to the commissioners' court of said county with reference thereto authorizing the commissioners' court to hire all necessary road machinery, tools or teams, and by agreement of the parties to apply the rental upon the purchase price thereof in the event the county purchases the same; and declaring an emergency."

H. B. No. 361, A bill to be entitled "An Act declaring the floods of Lavaca County, Texas, to be a public calamity; authorizing a donation and grant to Lavaca County Flood Control District of one-half of the State ad valorem taxes collected in Lavaca County for flood control improvement and maintenance purposes, specifying the reports thereon to be made by the assessor and collector of taxes; authorizing the issuance of bonds secured by a pledge of the funds donated and granted by the State and prescribing the manner of issuance thereof; providing the procedure hereunder for all matters relating to said donation; providing that if any provision of this Act shall be held invalid, the other provisions shall not be affected; and declaring an emergency."

H. B. No. 940, A bill to be entitled "An Act amending Section 3 of Article II of Chapter 495, Acts 1936, Forty-fourth Legislature, Third Called Session, as amended by Section 1 of S. B. No. 9, Acts 1939, Forty-sixth Legislature, Regular Session, page 541, to provide methods of determining the age of an applicant for or recipient of old age assistance and declaring an emergency."

Respectfully submitted,

E. R. LINDLEY,
Chief Clerk, House of Representatives.

Senate Resolution 111

Senator Hill, by unanimous consent, offered at this time the following resolution:

Whereas, The Honorable Joe T. Steadham, a representative of organized labor, in Austin issued this statement: "If Hitler conquers, American labor will have to compete with slave labor, and American living standards will be reduced to the lowest level since the Civil War.

"If Hitler should conquer Europe, it would be only a short time until America would find millions of tons of merchandise and supplies dumped upon our shores from Europe which will be produced by slave labor.

"We would have to admit these goods or we would have no foreign market for our production. In either case, American labor will have to compete with slave labor should Germany be successful in their efforts to conquer Europe.

"Living standards will be reduced to the lowest level since the Civil War.

"The gains made by labor for the past 60 years depend on the outcome of the world conflict now raging in Europe.

"The railway transportation brotherhoods are prepared to give fast and efficient movement of munitions, supplies and troops.

"Therefore, I, as a labor representative, appeal to labor and labor leaders throughout the Nation to adopt the policy of 'give and take.'

"Let it be said that the laboring classes did their part to preserve our democratic form of government." Now, therefore, be it

Resolved, That the Senate of Texas commends this statement as wise,

opportune and patriotic, a farsighted view that is befitting the occasion.

The resolution was read.

On motion of Senator Hill and by unanimous consent, the resolution was considered immediately and was adopted.

Senate Resolution 112

Senator Isbell, by unanimous consent offered at this time, the following resolution:

Whereas, The Senior Class of the Rockwall High School is now on a tour of the City of Austin; now, therefore, be it

Resolved by the Senate of Texas, That the Senate express its appreciation of having these visitors in the city; and, be it further

Resolved, That the privileges of the floor be extended to their Superintendent, J. A. Wilkerson, and that a copy of this resolution be furnished the President of the class.

The resolution was read.

On motion of Senator Isbell and by unanimous consent, it was considered immediately and was adopted.

Recess

Senator Mauritz moved that the Senate recess to 1:45 o'clock p. m., today.

The motion was lost by the following vote:

Yeas—15

Aikin	Lemens
Chadick	Mauritz
Cotten	Metcalf
Formby	Moffett
Graves	Ramsey
Hazlewood	Stone
Isbell	Vick
Lanning	

Nays—15

Beck	Shivers
Brownlee	Smith
Fain	Sulak
Hill	Van Zandt
Kelley	Weinert
Lovelady	Winfield
Martin	York
Moore	

Absent—Excused

Spears

Senator Kelley moved that the Senate recess to 10:00 o'clock a. m. Monday, April 28, 1941.

The motion was lost by the following vote:

Yeas—3

Kelley	Ramsey
Martin	

Nays—27

Aikin	Mauritz
Beck	Metcalf
Brownlee	Moffett
Chadick	Moore
Cotten	Shivers
Fain	Smith
Formby	Stone
Graves	Sulak
Hazlewood	Van Zandt
Hill	Vick
Isbell	Weinert
Lanning	Winfield
Lemens	York
Lovelady	

Absent—Excused

Spears

Senator York moved that the Senate recess to 10:00 o'clock a. m. tomorrow.

The motion was lost by the following vote:

Yeas—10

Brownlee	Ramsey
Chadick	Sulak
Formby	Vick
Hill	Winfield
Martin	York

Nays—20

Aikin	Lovelady
Beck	Mauritz
Cotten	Metcalf
Fain	Moffett
Graves	Moore
Hazlewood	Shivers
Isbell	Smith
Kelley	Stone
Lanning	Van Zandt
Lemens	Weinert

Absent—Excused

Spears

Senator Moore moved that the Senate recess to 2:00 o'clock p. m. today.

The motion prevailed; and the Senate, accordingly at 12:20 o'clock p. m., took recess to 2:00 o'clock p. m. today.

Afternoon Session

The Senate met at 2:00 o'clock p. m. and was called to order by the President.

Leave of Absence Granted

Senator Smith was granted leave of absence for the afternoon on account of important business, on motion of Senator Hill.

Message from the Governor

The President laid before the Senate and had read the following message from the Governor, which was then referred to the Committee on Nominations of the Governor.

Austin, Texas,
April 24, 1941.

To the Senate of the Forty-Seventh Legislature:

I ask the advice, consent and confirmation of the Senate to the following appointment:

To be a Member of the Board of Public Welfare for a six year term to expire January 20, 1947:

Dr. Thos. H. Taylor, Brownwood, Brown County (reappointment).

Respectfully submitted,

W. LEE O'DANIEL,
Governor of Texas.

Committee Substitute House Bill 8 on Passage to Third Reading

The Senate resumed consideration of the pending special order, same being C. S. H. B. No. 8, the omnibus tax bill, on its passage to third reading; with amendment by Senator Shivers and amendment by Senator Aikin to the amendment pending.

Question—Shall the amendment to the amendment be adopted?

Senator Moffett was permitted to offer at this time the following amendment to the bill:

(57)

Amend Article IX of C. S. H. B. No. 8, by adding between Sections 6 and 7 thereof a new Section designated as Section 6-A to read as follows:

"Section 6-A. There are hereby appropriated to the use of the Texas Liquor Control Board not to exceed Twenty-Five Hundred (\$2,500.00) Dollars, derived from the sale of liquor tax stamps before the proceeds of such

sales are allocated, to defray the costs of printing additional liquor tax stamps necessitated by the provisions of this Article."

The amendment was adopted.

The question then recurred on the adoption of amendment (56) to the amendment by Senator Shivers.

Senator Shivers moved to table the amendment (56).

Yeas and nays were demanded, and the motion to table prevailed by the following vote:

Yeas—12

Formby	Moffett
Hazlewood	Moore
Lanning	Ramsey
Lovelady	Shivers
Martin	Weinert
Mauritz	Winfield

Nays—10

Aikin	Lemens
Brownlee	Metcalfe
Chadick	Stone
Cotten	Sulak
Graves	York

Absent

Beck	Kelley
Fain	Vick
Isbell	

Paired

Senator Hill (present), who would vote nay with Senator Smith (absent), who would vote yea.

Senator Van Zandt (present), who would vote yea with Senator Spears (absent), who would vote nay.

Senator York offered the following amendment to the amendment:

(58)

Amend Shivers amendment, page 1, by striking out sub-section "D" of Section 1.

Senator Van Zandt moved to table the amendment to the amendment.

Yeas and nays were demanded, and the motion to table was lost by the following vote:

Yeas—10

Hazlewood	Moore
Lovelady	Ramsey
Martin	Shivers
Mauritz	Weinert
Moffett	Winfield

Nays—15

Aikin	Kelley
Brownlee	Lanning
Chadick	Lemens
Cotten	Metcalf
Fain	Stone
Formby	Sulak
Graves	York
Isbell	

Absent

Beck	Vick
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Paired

Senator Hill (present), who would vote nay with Senator Smith (absent), who would vote yea.

Senator Van Zandt (present), who would vote yea with Senator Spears (absent), who would vote nay.

Question—Shall the amendment to the amendment to adopted?

Yeas and nays were demanded, and the amendment to the amendment was lost by the following vote:

Yeas—13

Aikin	Lemens
Brownlee	Metcalf
Chadick	Stone
Fain	Sulak
Formby	Vick
Graves	York
Kelley	

Nays—13

Beck	Moffett
Hazlewood	Moore
Isbell	Ramsey
Lanning	Shivers
Lovelady	Weinert
Martin	Winfield
Mauritz	

Absent

Cotten

Paired

Senator Hill (present), who would vote yea with Senator Smith (absent), who would vote nay.

Senator Van Zandt (present), who would vote nay with Senator Spears (absent), who would vote yea.

Senator Aikin offered the following amendment to the amendment:

(59)

Amend substitute by striking out sub-section (a) of Section 1, of Article XIV, page 56, and inserting in lieu thereof the following:

"On bottled soft drinks the following tax shall be levied as follows on a per annum production:

'One to fifty thousand standard cases— $\frac{1}{2}$ cent per case;

Fifty to one hundred thousand cases—1 cent per case;

One hundred to one hundred and fifty thousand cases— $1\frac{1}{2}$ cents per case;

One hundred and fifty to two hundred thousand cases—2 cents per case;

Two hundred to two hundred and fifty thousand cases— $2\frac{1}{2}$ cents per case;

Two hundred and fifty to three hundred thousand cases—3 cents per case;

Three hundred and fifty to four hundred thousand cases—4 cents per case;

Four hundred to five hundred thousand cases—5 cents per case;

Five hundred thousand cases and up—6 cents per case.'"

Senator Fain moved to table the amendment to the amendment.

Yeas and nays were demanded, and the motion to table prevailed by the following vote:

Yeas—15

Beck	Mauritz
Brownlee	Moffett
Fain	Moore
Formby	Ramsey
Hazlewood	Shivers
Lanning	Weinert
Lovelady	Winfield
Martin	

Nays—11

Aikin	Metcalf
Chadick	Stone
Graves	Sulak
Isbell	Vick
Kelley	York
Lemens	

Absent

Cotten

Paired

Senator Hill (present), who would vote nay with Senator Smith (absent), who would vote yea.

Senator Van Zandt (present), who would vote yea with Senator Spears (absent), who would vote nay.

Senator Aikin offered the following amendment to the amendment:

(60)

Amend substitute for H. B. No. 8, Section 5 of Article XIV as follows:

"It shall be unlawful for any wholesaler, their salesmen, distributors, or representatives; either directly or indirectly to pay the retail dealer's fee, or in any other manner attempt to control the sale of soft drinks in such retail outlets, and any person, firm or corporation violating this Section shall be subject to the penalties hereinafter set out."

Senator Shivers raised a point of order against consideration of the amendment to the amendment on the ground that it was not germane.

The President sustained the point of order.

Senator Weinert moved the previous question on Article XIV of C. S. H. B. No. 8, and the motion was duly seconded.

Question—Shall the main question be now ordered?

Yeas and nays were demanded, and the main question was ordered by the following vote:

Yeas—16

Beck	Metcalf
Brownlee	Moffett
Fain	Moore
Formby	Ramsey
Graves	Shivers
Isbell	Van Zandt
Lovelady	Weinert
Martin	Winfield

Nays—11

Aikin	Mauritz
Chadick	Stone
Hazlewood	Sulak
Kelley	Vick
Lanning	York
Lemens	

Absent

Cotten

Absent—Excused

Spears

Paired

Senator Hill (present), who would vote nay with Senator Smith (absent), who would vote yea.

Senator Metcalfe moved to reconsider the vote by which the main question was ordered on Article XIV.

Yeas and nays were demanded, and the motion to reconsider prevailed by the following vote:

Yeas—14

Aikin	Lemens
Chadick	Mauritz
Formby	Metcalf
Graves	Stone
Hazlewood	Sulak
Kelley	Vick
Lanning	York

Nays—13

Beck	Moore
Brownlee	Ramsey
Fain	Shivers
Isbell	Van Zandt
Lovelady	Weinert
Martin	Winfield
Moffett	

Absent

Cotten

Absent—Excused

Spears

Paired

Senator Hill (present), who would vote yea with Senator Smith (absent), who would vote nay.

Question—Shall the main question be now ordered?

Yeas and nays were demanded, and the Senate refused to order the main question at this time by the following vote:

Yeas—12

Beck	Moore
Brownlee	Ramsey
Fain	Shivers
Lovelady	Van Zandt
Martin	Weinert
Moffett	Winfield

Nays—15

Aikin	Lemens
Chadick	Mauritz
Formby	Metcalf
Graves	Stone
Hazlewood	Sulak
Isbell	Vick
Kelley	York
Lanning	

Absent

Cotten

Absent—Excused

Spears

Paired

Senator Hill (present), who would vote nay with Senator Smith (absent), who would vote yea.

Senator Aikin offered the following amendment to the amendment:

(61)

Amend Shivers substitute by adding the following after the last paragraph:

"It shall be unlawful for any distributor to in any manner attempt to control the sale of bottle drinks by furnishing coolers and/or restricting said coolers to the use and for the purpose of any particular drink."

Senator Moore raised a point of order against consideration of the amendment to the amendment, on the ground that it is not germane.

The President sustained the point of order.

Senator York offered the following amendment to amendment (53) by Senator Shivers:

Amend Shivers amendment, page 2, at the end of Section D of Section 1: "Providing, however, that drinks containing more than fifty (50%) per cent of milk by content, and/or milk products, shall be exempted from the provisions of this Act."

Senator Shivers moved to table the amendment to the amendment.

Yeas and nays were demanded, and the motion to table was lost by the following vote:

Yeas—9

Beck	Moore
Brownlee	Ramsey
Chadick	Shivers
Formby	Weinert
Lovelady	

Nays—17

Aikin	Mauritz
Fain	Metcalfe
Graves	Moffett
Hazlewood	Stone
Isbell	Sulak
Kelley	Vick
Lanning	Winfield
Lemens	York
Martin	

Absent

Cotten

Paired

Senator Hill (present), who would vote nay with Senator Smith (absent), who would vote yea.

Senator Van Zandt (present), who would vote yea with Senator Spears (absent), who would vote nay.

The amendment to the amendment was adopted.

Question—Shall the substitute amendment (53) by Senator Shivers (as amended) be adopted?

The amendment was adopted.

Senator Lemens offered the following amendment to the bill:

(62)

Amend C. S. H. B. No. 8, Article XVII, by adding at the end of said Article XVII, a new Section to be known as Section (10), which said new Section shall read as follows:

"Section (10). The tax imposed by this Article shall not be construed as being applicable to shares, share accounts, certificates or pass books issued by any building and loan association chartered under the laws of this State, nor to credit unions defined in Article 2461, Revised Civil Statutes, 1925."

LEMENS,
MOORE.

The amendment was adopted.

Senator Stone offered the following amendment to the bill:

(63)

Amend mimeographed copy of C. S. H. B. No. 8, Article XVII, Section 1, page 84, by adding after the words "nor the delivery is made in this State and when no act necessary to effect the sale or transfer is done in this State," the following: "including transfers made upon the books of such association, company, corporation or trustee regularly kept at a transfer office, or by a transfer agent outside the State."

Question—Shall the amendment be adopted?

Yeas and nays were demanded, and the amendment was lost by the following vote:

Yeas—12

Aikin	Graves
Fain	Isbell
Formby	Lanning

Lemens
Mauritz
Stone

Van Zandt
Vick
York

Nays—14

Beck
Brownlee
Chadick
Hill
Kelley
Lovelady
Martin

Metcalf
Moffett
Moore
Ramsey
Sulak
Weinert
Winfield

Absent

Cotten

Hazlewood

Absent—Excused

Spears

Paired

Senator Shivers (present), who would vote yea with Senator Smith (absent), who would vote nay.

Senator Shivers offered the following amendment to the bill:

(64)

Amend sub-section B, under Section 1, Article 18, of the substitute for H. B. No. 8, by striking all of said sub-section B and inserting in lieu thereof the following:

"(b) Every person in this State engaged in the business of furnishing any service or performing any duty for others for a consideration or compensation, with the use of any devices, tools, instruments or equipment, electrical, mechanical or otherwise, or by means of any chemical, electrical or mechanical process when such service is performed in connection with the cementing of the casing seat of any oil or gas well or the shooting or acidizing the formations of such wells or the surveying or testing of the sands or other formations of the earth in any such oil or gas well, shall report on the 20th of each month and pay to the Comptroller, at his office in Austin, Texas, an occupation tax equal to one (1%) per cent of the gross amount received from said service furnished or duty performed, during the calendar month next preceding. The said report shall be executed under oath on a form prescribed and furnished by the Comptroller."

SHIVERS,
HAZLEWOOD.

Senator Lovelady offered the following amendment to the amendment:

(65)

Amend Shivers amendment, sub-section (b) of Section 1, so as to change the words and figures "one (1%) per cent" to "two (2%) per cent."

LOVELADY,
HILL.

Question—Shall the amendment to the amendment be adopted?

Yeas and nays were demanded, and the amendment to the amendment was adopted by the following vote:

Yeas—23

Aikin	Lovelady
Beck	Martin
Brownlee	Mauritz
Chadick	Metcalf
Fain	Moffett
Formby	Ramsey
Graves	Stone
Hill	Sulak
Isbell	Vick
Kelley	Winfield
Lanning	York
Lemens	

Nays—5

Hazlewood	Van Zandt
Moore	Weinert
Shivers	

Absent

Cotten

Absent—Excused

Smith

Spears

The amendment as amended was then adopted.

Senator Shivers offered the following amendment to the bill:

(66)

Amend committee substitute for H. B. No. 8, Article XIX, Section 10, by striking out the words "thirty (30) gallons or more" appearing in line 11, page 116, and inserting in lieu thereof the words "more than thirty (30) gallons."

The amendment was adopted.

Senator Shivers offered the following amendment to the bill:

(67)

Amend committee substitute for H. B. No. 8, Article XIX, Section 14,

sub-section (e) by striking out the word "Section" appearing in line 4, page 131, and inserting in lieu thereof the word "Article."

The amendment was adopted.

Senator Shivers offered the following amendment to the bill:

(68)

Amend committee substitute for H. B. No. 8, Article XIX, Section 26, by inserting the words "in or" between the words "premises" and "upon" appearing in sub-section (k) of said Section.

The amendment was adopted.

Senator Mauritz offered the following amendment to the bill:

(69)

Amend Section 13 of Article XIX of H. B. No. 8 (and the caption of said bill to conform therewith) so that said Section 13 will hereafter read as follows:

"Sec. 13. The term 'refund dealer' wherever used in this Article shall mean any dealer, distributor, or other person who engages in the selling of motor fuel or who appropriates for his own use and consumption motor fuel on which a refund of the tax paid on such motor fuel is authorized by this Article.

"(a) Any person who purchases motor fuel in the State of Texas, and any distributor who appropriates motor fuel for use when such motor fuel purchased by such person or used by such distributor for operating or propelling motor boats, aircraft, or for any purpose other than use in a motor vehicle operated or intended to be operated in whole or in part upon any of the public highways, roads, or streets of the State (except for agricultural purposes, for which provision is made in Sub-section (f) of this Section), on which motor fuel tax has been paid, either directly or indirectly, shall be refunded the amount of such taxes so paid by the distributor, exclusive of the deduction allowed distributors for collecting the tax and for evaporation and other losses in the manner and subject to the limitations and conditions described herein. Provided, however, that no greater amount shall be refunded than has been paid into the Treasury on any motor fuel. The tax actually paid by any distributor or person shall

be refunded as provided herein on motor fuel not subject to the tax.

"(b) Any person or distributor desiring to appropriate or sell motor fuel on which a refund of the tax is authorized by this Article, shall, before making such appropriation or sale, make application to the Comptroller of Public Accounts, upon forms to be prescribed by the Comptroller, and containing such information as the Comptroller may require, for a refund dealer's license to sell such motor fuel; and it shall be unlawful for any person to sell or appropriate any motor fuel upon which a refund of the tax will be made, or is intended to be made, without first having obtained from the Comptroller of the State of Texas such license to sell or appropriate such motor fuel.

"A separate application shall be made to the Comptroller by such person or distributor for each place of business from which refund motor fuel is to be sold or distributed by such person or distributor, and the Comptroller shall issue a separate license for each such place of business. The Comptroller shall examine each application for license received by him, and, if found in due form, and if within the discretion of the Comptroller, the applicant is entitled to such license, the same shall be issued. When such application is made to the Comptroller, the applicant for license shall be required to file oath with the Comptroller that he will faithfully perform and comply with the Statute making provision for the sale, distribution, and use of motor fuel subject to a refund of the motor fuel taxes. Each license issued hereunder shall remain in full force and effect until the first day of March following its date of issue, and annually on the first day of March each refund dealer, or other person, desiring to sell or appropriate motor fuel upon which a refund of the tax is authorized must obtain from the Comptroller a license, or a renewal of his existing license, to sell such motor fuel as herein provided. Any refund dealer's license issued hereunder is not transferable unless such transfer is authorized by the Comptroller. Any person who sells motor fuel upon which a refund of the tax may be authorized, or is claimed, under the provisions of this Article, without having obtained a refund dealer's license, as provided

for under this Article, shall be guilty of a misdemeanor, and upon conviction, shall be liable in any sum not to exceed One Thousand (\$1,000.00) Dollars, or by a jail sentence not to exceed six (6) months in jail, or by both such fine and jail sentence.

"Every refund dealer shall be required to maintain the records required of a dealer in Section 10 of this Article. Said refund dealer shall also be required to affix his license number to every invoice of exemption he may issue under the provisions of this Article.

"The Comptroller shall prescribe the form of license to be used under this Article and shall have authority, and it shall be his duty, to revoke and cancel any license issued hereunder when the refund dealer violates any Section of this Article. And, in the event the Comptroller does revoke a license, then the said license or renewal certificate and all books containing invoices of exemption held by such refund dealer shall be accounted for and surrendered to the Comptroller.

"No refund of the tax shall be granted on any motor fuel to any person, claimant, firm, corporation, or otherwise, unless such motor fuel has been purchased from or used by a licensed refund dealer as provided for in this Article; and the Comptroller is hereby prohibited from issuing a warrant in payment of any refund of the tax on any motor fuel not purchased from a licensed refund dealer, except refund on motor fuel exported or lost by accident.

"(c) The invoice of exemption shall be demanded by the purchaser or recipient of motor fuel used for refund purposes, and upon each delivery by a refund dealer, or upon each appropriation for use of motor fuel upon which a refund of the tax may be claimed, the invoice of exemption shall be made out at the time of such delivery, or of such appropriation for use, which invoice of exemption shall state; the current number of the license of the refund dealer; the number of gallons of motor fuel thus delivered or appropriated; the purpose for which such motor fuel will be used, or is intended to be used; the date of purchase, and the date and place of delivery, or appropriation; the name of the purchaser or user; the name of the agent or employee actually

making the purchase, or appropriation, if any; the seller and place of business of seller; the manner of delivery. And the said invoice of exemption shall show thereon such other information as the Comptroller may require; and no refund shall be allowed unless the refund dealer executes such an invoice of exemption as provided above. Provided, however, that if it be shown to the Comptroller by evidence sufficient and satisfactory to the Comptroller that the motor fuel was in good faith used by claimant for exempt purposes and the invoice of exemption presented with the claim did not issue at the time of delivery, through no fault of the claimant, the rights of the claimant shall not be prejudiced because of the invoice of exemption not having been issued at the time of delivery of the motor fuel, and the Comptroller shall issue warrant in payment of the claim.

"And provided further, that the person selling such motor fuel, or the refund dealer, in issuing invoices of exemption to the user of such motor fuel, shall make such invoices in duplicate, the duplicate of which shall be delivered to the user of such motor fuel, and the original shall be retained by the refund dealer for a period of two (2) years, at the place of business designated in the refund dealer's license, in the same manner and subject to the same examination as required of other records of motor fuel to be kept.

"Each invoice of exemption shall be issued at the time of delivery by the refund dealer, or his employee, and shall also be signed by the user of such motor fuel, or by his duly authorized agent. But, if the user of such motor fuel is not present at the time of delivery, and cannot sign the invoice of exemption at the time of delivery, then he shall be required to sign such invoice at his first opportunity thereafter. The refund dealer or employee of said refund dealer shall not sign for the purchaser when issuing the invoice of exemption.

"(d) When a claimant purchases or acquires for use motor fuel upon which a refund of the tax may be due, he shall within six (6) months from the date of delivery of the motor fuel upon which a refund is claimed, and no thereafter, file with the Comptroller an affidavit,

on such form as may be prescribed by the Comptroller. Said affidavit shall include a statement as to the source or place of purchase or acquisition of such motor fuel used for purposes other than in propelling motor vehicles over the highways of this State; that the information stated in the attached duplicate copy of the invoice of exemption is true and correct, and the manner in which said motor fuel was used, and that no part of said motor fuel was used in propelling motor vehicles over the highways of this State. Said affidavit shall be accompanied by the duplicate copy of the invoice of exemption above referred to, and the Comptroller may require other affidavits in such form and time as he may deem advisable, and if he finds that such claims are just, and that the taxes claimed have actually been paid by claimant, then he shall issue warrant or warrants for the amounts due claimant, but no warrant shall be paid by the State Treasurer unless presented for payment within two (2) years from the close of the fiscal year in which said warrant was issued, but claims for the payment of such warrant may be presented to the Legislature for appropriation to be made from which said warrants may be paid.

"No refund shall be made where motor fuel is used later than six (6) months from date of delivery or appropriation, and no refund shall ever be made where it appears from the invoice, or from the affidavits, or other evidence submitted, that the sale or purchase was made more than six (6) months prior to the date of filing of the application for refund. The date of filing shall be the day such claim is actually received in the Comptroller's office. In addition to other penalties prescribed in this Article, it is herein provided that a felony conviction for a violation of any provision of this Section of said Article shall automatically forfeit the right of said convicted person to sell motor fuel for refund purposes, and shall forfeit the right of said convicted person to file a claim and obtain a refund for a period of one (1) year from the date of said conviction.

"No refund of the tax shall be allowed on motor fuel used in any registered or licensed motor vehicle or in any motor vehicle operated or intended to be operated in whole or

in part upon any of the highways, roads, and streets of this State.

"If any distributor, or other person, shall export or lose by fire or other accident any motor fuel in quantities of one hundred (100) gallons or more, so that the same may never be made use of within this State, after the tax has been paid on such motor fuel, claim for refund may be made in the manner herein provided, or as the Comptroller may direct. Provided, however, that showing must be made that said tax was paid or accounted for by a licensed and bonded distributor, and the Comptroller shall deduct from such refund made under the provisions of this Article the one (1) per cent deduction allowed distributors.

"(e) When the Comptroller has issued a refund dealer's license to any person desiring to sell or distribute motor fuel upon which a refund of the tax is authorized, or upon which a claim is to be filed for a refund of the tax, the Comptroller shall issue to such refund dealer a book, or books, of blank invoices of exemption, which invoices shall be serially numbered, and an original and a duplicate of each invoice shall be made. The Comptroller shall keep accurate records of the number of books of invoices of exemption issued and furnished to each refund dealer, and the refund dealer shall, at all times, account for all such books of invoices of exemption so received by him. Any invoices of exemption mutilated or unusable must be returned to the Comptroller by the refund dealer for credit to his account, and any unissued invoice of exemption lost or destroyed must be reported to the Comptroller by such refund dealer. The Comptroller shall not issue any additional books of invoices of exemption to any refund dealer until he has made proper accounting for each invoice of exemption theretofore issued him. The books of invoices of exemption issued are not transferable or assignable by such refund dealer unless such transfer or assignment is authorized by the Comptroller, and failure by such refund dealer to make proper accounting for all invoices of exemption issued to him by the Comptroller shall be cause for the cancellation of his license as a refund dealer as herein provided.

"If the duplicate invoice of exemption retained by purchaser is lost, or destroyed, by purchaser, such purchaser may make application to the Comptroller for forms to be issued in lieu of lost duplicate.

"The invoice of exemption required by this Article shall be furnished, free of cost, by the Comptroller to the refund dealer. And, no forms of invoice of exemption shall be used by the dealer or person using refund motor fuel other than those issued and furnished by the Comptroller.

"(f) (1) Any person who purchases motor fuel in the State of Texas and any distributor who appropriates motor fuel for use, when such motor fuel purchased by such person or used by such distributor for operating or propelling any stationary gas engine or tractor used for agricultural purposes shall be exempted from the payment thereon, at the time of such purchase or appropriation, or at any other time, of the occupation tax or excise tax of four (4) cents on each gallon of motor fuel or fractional part thereof imposed by this Act; provided, that upon each purchase by such person and upon each appropriation for use of motor fuel by a distributor, the following requirements shall be complied with by such person or distributor.

"(2) Upon each purchase by such person and upon each appropriation for use of motor fuel by a distributor for agricultural purposes, an affidavit in triplicate shall be made at the time of such purchase or of such appropriation for use by such person or distributor, which affidavit shall state the number of gallons of motor fuel so purchased or appropriated, the purpose for which it will be used or is intended to be used, the serial number of the farm (as listed by the agricultural adjustment administration of the Federal Government) upon which the motor fuel will be used, the date and place of purchase or appropriation, the name of the person from whom said purchase or appropriation is made, the name of the agent or employee actually making the purchase or appropriation, if any, the manner of delivery and place of delivery with the price of the motor fuel stated; and further providing that the Comptroller of Public Accounts shall, by rule or regulation duly promulgated, require

that the tank, barrel, drum, or other container in which said motor fuel is kept, contained or stored for agricultural purposes, shall, by said purchaser, be plainly marked, stamped, tagged or otherwise identified as tax-exempt motor fuel for agricultural purposes; and further providing that any person selling motor fuel and receiving such affidavit in lieu of the tax imposed by this Act, or any distributor appropriating motor fuel and making such affidavit, shall keep a copy of such affidavit for a period of two (2) years and shall send, within fifteen (15) days after such purchase or appropriation the original of such affidavit to the Comptroller of the State of Texas; provided, however, that if such purchase or appropriation is made from a person who is not a distributor, as that term is defined in this Act, and who did not make the first sale of such motor fuel and who did not pay to the State of Texas the occupation or excise tax thereon of four (4) cents per gallon or fractional part thereof, such person shall within fifteen (15) days from the date of such purchase or appropriation from him, mail the original of the affidavit to the distributor who made the first sale of the motor fuel and who paid to the State of Texas the occupation tax or excise tax thereon of four (4) cents per gallon or fractional part thereof.

"(3) The said distributor who made the first sale of the motor fuel and who paid the State of Texas the occupation or excise tax thereon of four (4) cents per gallon or fractional part thereof shall be refunded the amount of such taxes so paid on such motor fuel by such distributor, provided, however, that no greater amount shall be refunded than has been paid into the State Treasury on any motor fuel. The said distributor-claimant shall, within (15) days from the receipt of the affidavit of the person making the purchase of motor fuel tax free or the appropriation for use of motor fuel tax free, file with the Comptroller such affidavit, together with his affidavit on such forms as may be prescribed by the Comptroller. Said affidavit of the distributor-claimant shall include a statement of the first sale of the motor fuel upon which an occupation or excise tax of four (4) cents per gallon or fractional part thereof has been paid

to the State of Texas and upon which a refund of such taxes so paid by the distributor is being claimed. The Comptroller may require other affidavits in such form as he may deem advisable, and if he finds that such claims are just, and that the taxes claimed have actually been paid by the claimant, then he shall within sixty (60) days issue warrant or warrants for the amount due claimant, but no warrant shall be paid by the State Treasury after twelve (12) months from the date thereof, and if such warrant is not presented within twelve (12) months from the date thereof claimant shall forfeit his right to the refund.

"(g) All filing fees shall be paid into the State Treasury and be paid out on vouchers and warrants on appropriations made by the Legislature as prescribed by law.

"(h) All the moneys paid into the Treasury under the provisions of this Act, except the filing fees above, shall be set aside in a special fund to be known as the Highway Motor Fuel Tax Fund and no part of said fund shall be credited to the Available School Fund until a report is made by the Comptroller to the Treasury, showing the total maximum amount of refunds that may be required to be paid by the State out of said funds. The Comptroller shall on the 20th day of each month, or as soon thereafter as is possible, compute and ascertain the maximum amount of funds that may be due by the State on sale of motor fuel during the preceding month, upon which a refund may be due, and shall certify to the Treasurer the maximum amount, and the Treasurer shall reserve said amount each month out of which to pay refunds, and shall not distribute that part of said fund until the expiration of the time in which a refund can be made out of said fund, but as soon as said report has been made by the Comptroller, and the maximum amount of refunds determined, he shall deduct said maximum amount from the total taxes paid for such month, and apply the remainder of such as provided by law. If claimant has lost or loses, or for any reason failed or fails to receive warrant after warrant was or has been issued by the Comptroller, and upon satisfactory proof of such, the Comptroller may issue claimant duplicate warrant as

provided for in Article 4365, Revised Civil Statutes of Texas, of 1925, but in no event shall a duplicate warrant be issued after one year from date of original warrant.

"(i) So much of said fund is hereby appropriated and set aside as may be necessary to pay the refunds provided for herein, and if a specific amount be necessary then there is hereby appropriated and set aside for said purpose the sum of Two Hundred Thousand Dollars (\$200,000) or so much thereof as may be necessary. In no event shall any refund be made to any person in excess of the actual amount paid by such person, and the amount deducted originally by the distributor shall be deducted in computing the refund. The Comptroller shall deduct One Dollar (\$1.00) from all such refunds as a filing fee, which fee shall be deducted from the warrant in payment of such refund, which said filing fee shall be set aside for the use and benefit of the Comptroller in the administration and enforcement of this Article as well as for the payment of expenses in furnishing the form of invoice of exemption and other forms provided for herein, and the same is hereby appropriated for such purpose."

Senator Shivers moved to table the amendment.

Yeas and nays were demanded, and the motion to table prevailed by the following vote:

Yeas—15

Aikin	Metcalf
Beck	Moore
Chadick	Shivers
Fain	Van Zandt
Hill	Weinert
Isbell	Winfield
Lovelady	York
Martin	

Nays—12

Formby	Mauritz
Graves	Moffett
Hazlewood	Ramsey
Kelley	Stone
Lanning	Sulak
Lemens	Vick

Absent

Cotten

Absent—Excused

Spears

Paired

Senator Brownlee (present), who would vote nay with Senator Smith (absent), who would vote yea.

Senator Mauritz offered the following amendment to the bill:

(70)

Amend sub-section (a) of Section 14 of Article XIX of H. B. No. 8 (and the caption of said bill to conform therewith) so that said sub-section (a) of Section 14 will hereafter read as follows:

"Section 14. (a) From and after the effective date of this Article, there shall be and is hereby levied and imposed an excise tax of four (4c) cents per gallon, or fractional part thereof, on all users of liquefied gases and other liquid fuels upon the use of such liquefied gases and other liquid fuels by any person within this State only when such liquefied gases and other liquid fuels are used in an internal combustion engine for the generation of power to propel motor vehicles upon the public highways of this State; provided that in lieu of such four (4c) cents tax there shall be and is hereby levied an excise tax of eight (8c) cents per gallon, or fractional part thereof, on the users of diesel fuel. Said tax shall be computed and paid to the State of Texas through the Comptroller at the time and in the manner hereinafter provided.

"The term 'use' wherever used in this Section shall mean and include the consumption of 'liquefied gases' and 'other liquid fuels,' as those terms are defined in Section 1 of this Article, by any person in a motor vehicle for the propulsion thereof upon the public highways of this State.

"Each 'user' shall be prima facie presumed to have used or consumed for taxable purposes all liquefied gases and other liquid fuels shown by a duly verified audit of the Comptroller to have been purchased or received by him, and not accounted for.

"From and after the effective date of this Article, any person using, or who may thereafter desire to use liquefied gases or other liquid fuels defined herein for the purpose of the propulsion of motor vehicles upon the public highways of this State, shall file with the Comptroller of Public Accounts, an application for a permit to use said products, as herein

provided, in such form as the Comptroller may prescribe, giving correct name and address of the person making application, the make, horse-power motor number highway license number, and fuel tank capacity of each vehicle intended to be used, including all auxiliary tanks, and a new application shall be filed on or before December 31st of each year for a permit for the subsequent calendar year. The application shall carry an agreement to file information with the Comptroller of any additional equipment acquired, or any changes in equipment being used, during the period for which permit is issued, and such other information as the Comptroller may require. Said permit may be revoked for violation of any provision hereof."

The amendment was adopted.

Senator Mauritz offered the following amendment to the bill:

(71)

Amend sub-section (e) of Section 14 of Article XIX of H. B. No. 8 (and the caption of said bill to conform therewith) so that said sub-section (e) of Section 14 will hereafter read as follows:

"(e) It is expressly provided that any carrier-for-hire operating under a certificate of convenience and necessity issued by the Railroad Commission of this State, and who is not engaged in the business of selling or distributing motor fuel or other taxable petroleum products, or in transporting such products for the purpose of sale or distribution for sale, and any person operating motor buses under franchises or licenses issued by municipalities, who purchase from bonded distributors holding permits under the terms of this Article, all the liquefied gases and other liquid fuels used by said carriers and said persons in propelling motor vehicles upon the public highways of this State, in quantities of not less than five hundred (500) gallons at a single purchase and delivery, shall, if the tax is paid by said carrier or person to said distributor at the rate of four (4c) cents upon each gallon of said liquefied gases or other liquid fuels except diesel fuel, in which case the rate of eight (8c) cents upon each gallon, so purchased or received, be exempt from the provisions of this Section requiring a user's permit to purchase, possess and use such products, and

the other provisions incident to such user's permit. Provided, however, that said carriers and said persons shall be required to file information with the Comptroller showing the make, horse-power, motor number, highway license number, and the fuel tank capacity, including auxiliary fuel tanks, of each and every motor vehicle using said products, and information showing any additional motor vehicles acquired and using said products, and any changes in such motor vehicles being used. The said persons and carriers shall be required to secure upon each purchase or receipt of liquefied gases and other liquid fuels and keep for a period of two (2) years for the inspection of the Comptroller, or his authorized representatives, a manifest, containing all the information required to be recorded thereon by Section 9 (b) of this Article. Provided, further, that any distributor who shall collect the said tax upon the sale or distribution of liquefied gases or other liquid fuels as hereinabove provided, shall be required to include the said tax so collected in the report and remittance required to be delivered to the Comptroller by Section 3 of this Article. Failure to report and pay over to the State of Texas any taxes collected by a distributor upon the sale or distribution of said products shall subject said distributor to all the liabilities, penalties, forfeitures, interest and costs provided in this Article for the failure to report and pay to the State of Texas motor fuel taxes collected."

The amendment was adopted.

Senator Van Zandt offered the following amendment to the bill:

(72)

Amend the committee substitute for H. B. No. 8 by adding a new Article immediately following Article 19 and renumber succeeding Articles to conform, which Article shall read as follows:

Article 11.

Section 1. That Article 7064, Revised Civil Statutes of 1925, as amended by House Bill No. 8, Third Called Session, Forty-fourth Legislature, is hereby amended so as to read as follows:

"Article 7604. Insurance Companies. Every insurance corporation, Lloyd's, or reciprocals, and any other organization or concern transacting

the business of fire, marine, marine inland, accident, credit, title, live-stock, fidelity, guaranty, surety, casualty, or any other kind or character of insurance business other than the business of life insurance, and other than fraternal benefit associations, within this State at the time of filing its annual statement, shall report to the Board of Insurance Commissioners the gross amount of premiums received upon property located in this State or on risks located in this State during the preceding year, and each of such insurance carriers shall pay an annual tax upon such gross premium receipts as follows: shall pay a tax of four and five hundredths (4.05%) per cent, provided that any such insurance carriers doing two (2) or more kinds of insurance business herein referred to shall pay the tax herein levied upon its gross premiums received from each of said kinds of business; and the gross premium receipts where referred to in this law shall be the total gross amount of premiums received on each and every kind of insurance or risk written, except premiums received from other licensed companies for reinsurance, less return premiums and dividends paid policy-holders, but there shall be no deduction for premiums paid for reinsurance. The gross premium receipts, as above defined, shall be reported and shown as the premium receipts in the report to the Board of Insurance Commissioners by the insurance carriers, upon the sworn statements of two (2) principal officers of such carriers. Upon receipt by the Board of Insurance Commissioners of the sworn statements, showing the gross premium receipts by such insurance carriers, the Board of Insurance Commissioners shall certify to the State Treasurer the amount of taxes due by each insurance carrier, which tax shall be paid to the State Treasurer on or before the 1st of March following, and the Treasurer shall issue his receipt to such carrier, which shall be evidence of the payment of such taxes. No such insurance carrier shall receive a permit to do business in this State until all such taxes are paid. If any such insurance carrier shall have as much as one-fourth of its entire assets, as shown by said sworn statement, invested in any or all of the following securities; real estate in this State, bonds of this State or of

any county, incorporated city or town of this State, or other property in this State in which by law such insurance carriers may invest their funds, then the annual tax of any such insurance carriers shall be one and one-half (1-1/2%) per cent of its said gross premium receipts; and if any such insurance carrier shall invest as aforesaid as much as one-half of its assets, then the annual tax of such insurance carrier shall be three-fourths of one per cent (3/4 of 1%) of its gross premium receipts, as above defined. No occupation tax shall be levied on insurance carriers herein subjected to a gross premium receipt tax by any county, city, or town. All mutual fraternal benevolent associations, now or hereafter doing business in this State under the lodge system and representative form of government, whether organized under the laws of this State or a foreign State or country, are exempt from the provisions of this Article. The taxes aforesaid shall constitute all taxes collectible under the laws of this State against any such insurance carriers, except the maintenance tax provided for under Article 4902 and the tax on premiums received under Workmen's Compensation Insurance policies, as provided for in House Bill No. 471, Chapter 25, General and Special Laws, Forty-fifth Legislature, Regular Session; taxes provided in House Bill No. 258, Chapter 125, General and Special Laws, Forty-fifth Legislature, Regular Session; and Senate Bill 77, Chapter 335, General and Special Laws, Forty-fifth Legislature, Regular Session; and no other tax shall be levied or collected from any insurance carrier by any county, city, or town, but this law shall not be construed to prohibit the levy and collection of State, County, and municipal taxes upon the real and personal property of such carrier. Purely co-operative or mutual fire insurance companies carried on by the members thereof solely for the protection of their own property, and not for profit, shall be exempt from provisions of this law; however, foreign assessment casualty companies admitted to do business in Texas under Chapter 5, Title 78, Revised Civil Statutes of Texas of 1925, shall also pay a tax of four and five hundredths (4.05%) per cent of their gross premium receipts from Texas business, as such

receipts are herein defined. Provided, however, if any such company shall have an amount equal to one-half of the gross amount of assessments, dues, premiums, or other amounts collected from policyholders within this State during the preceding year, as shown by the sworn statement herein required to be filed, invested in any or all of the above mentioned securities, then the annual tax of such company shall be three (3%) per cent of its said receipts for such preceding period, and if such company shall have invested as aforesaid an amount equal to the gross amount of such receipts for the preceding year, as shown by said sworn statement, then the annual tax of such company shall be one-half of one per cent (1/2 of 1%) of its said receipts."

Sec. 2. That Article 7064a, Revised Statutes of 1925, as enacted by House Bill No. 8, Third Called Session, Forty-fourth Legislature, is hereby amended so as to read as follows:

"Article 7064a. Every group of individuals, society, association or corporation domiciled in the State of Texas transacting the business of life, accident, or life and accident, health and accident insurance for profit, or for mutual benefit or protection, shall at the time of filing its annual statement report to the Board of Insurance Commissioners the gross amount of premiums received from or upon the lives of persons residing or domiciled in this State during the preceding year and each of such groups of individuals, society, association, or corporation shall pay an annual tax of five-eighths of one per cent (5/8 of 1%) of such gross premium receipts, provided, however, that this tax shall not apply to local mutual aid associations, or fraternal benefit societies or organizations. Such gross premium receipts so reported shall not include premiums received from other licensed companies for reinsurance, but there shall be no deduction made for premiums paid for reinsurance. If any such group of individuals, society, association, or corporation does more than one kind of insurance business, then it shall pay the tax herein levied upon the gross premium for each kind of insurance written; the provisions of this Act shall not apply to fraternal insurance organizations or societies

that limit their membership to one occupation. The report of the gross premium receipts shall be made upon the sworn statement of two (2) principal officers. Deductions from the gross premium receipts shall be allowed any group of individuals, society, association, or corporation of an acquisition cost of all of the first year's premiums, except that on industrial business such companies shall be permitted to deduct one and one-half (1-½) times the amount of the first year's premiums as acquisition costs. Upon receipt by it of the sworn statements above provided for, the Board of Insurance Commissioners shall certify to the State Treasurer the amount of taxes due by each of such group of individuals, society, association, or corporation, which tax shall be paid to the State Treasurer on or before the 1st of March following and the Treasurer shall issue his receipt therefor as evidence of the payment of such taxes. No such group of individuals, society, association, or corporation shall receive a permit to do business until all such taxes are paid. The taxes aforesaid shall constitute all taxes and license fees collectible under the laws of this State against any such insurance organizations, except the fees provided for under Article 3920, Revised Civil Statutes of Texas of 1925, as amended by Acts of the Forty-second Legislature of 1931, Chapter 152, Section 1, and no other taxes shall be levied or collected by any county, city, or town except State, county and municipal ad valorem taxes upon the real and personal property of such insurance organizations."

Sec. 3. That Article 4769, Revised Civil Statutes of 1925, as amended by H. B. No. 8, Third Called Session, Forty-fourth Legislature, is hereby amended so as to read as follows:

"Article 4769. Report Showing Gross Receipts. Each life insurance company not organized under the laws of this State, transacting business in this State, shall annually, on or before the 1st day of March, make a report to the Commissioner, which report shall be sworn to by either the president or vice president and secretary or treasurer of such company, which shall show the gross amount of premiums collected during the year ending on December 31st, preceding, from citizens of this State upon policies of insurance. Each such com-

pany shall pay annually a tax equal to four and sixty-five hundredths (4.65%) per cent of such gross premium receipts. When the report of the investment in Texas securities, as defined by law, of any such companies as of December 31st of any year shall show that it has invested on said date as much as thirty (30%) per cent of its total Texas reserves as defined by law, in promissory notes or other obligations secured by mortgage, deed of trust, or other lien on Texas real estate and/or in loans to residents or citizens of Texas secured by the legal reserve on the respective policies held by such borrowers, the rate of occupation tax shall be reduced to four and five one hundredths (4.05%) per cent; and when such report shall show that such company has so invested on said date as much as sixty (60%) per cent of its total Texas reserve, the rate of such tax shall be reduced to three and six-tenths (3.6%) per cent; and when such report shall show that such company has so invested, on said date, as much as seventy-five (75%) per cent of its total Texas reserve, the rate of such tax shall be reduced to three and one-tenth (3.1%) per cent. All such companies shall, in any event, make the investments in Texas securities in proportion to the amount of Texas reserves as required by law. Such taxes shall be for and on account of the business transacted within this State during the calendar year in which such premiums were collected, or for that portion thereof during which the company shall have transacted business in this State. This Act shall not in any manner affect the obligation for the payment of any taxes that have accrued and that are now due or owing, but the obligation as now provided by law for the payment of such taxes shall continue in full force and effect."

Sec. 4. To be allocated as hereinafter provided in this Act.

Senator York moved to table the amendment.

Yeas and nays were demanded, and the motion to table was lost by the following vote:

Yeas--11

Brownlee	Moore
Graves	Ramsey
Kelley	Stone
Lanning	Vick
Lemens	York
Mauritz	

Nays—18

Aikin	Lovelady
Beck	Martin
Chadick	Metcalfe
Cotten	Moffett
Fain	Shivers
Formby	Sulak
Hazlewood	Van Zandt
Hill	Weinert
Isbell	Winfield

Absent—Excused

Smith	Spears
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The question then recurred on the adoption of the amendment.

Yeas and nays were demanded, and the amendment was adopted by the following vote:

Yeas—19

Aikin	Lovelady
Beck	Martin
Chadick	Mauritz
Cotten	Metcalfe
Fain	Moffett
Formby	Shivers
Hazlewood	Van Zandt
Hill	Weinert
Isbell	Winfield
Lanning	

Nays—10

Brownlee	Ramsey
Graves	Stone
Kelley	Sulak
Lemens	Vick
Moore	York

Absent—Excused

Smith	Spears
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Senator Kelley moved that the Senate recess to 10:00 o'clock a. m. Monday.

The motion was lost.

Senator Mauritz moved that the Senate recess to 8:00 o'clock p. m. today.

The motion was lost.

Senator Shivers offered the following amendment to the bill:

(73)

Amend committee substitute for H. B. No. 8, Article IX, by adding to the first sentence of Section 3, the following words: "providing that such tax shall, before allocation, bear a proportionate amount of the costs of administration and enforcement of the

Texas Liquor Control Act as now provided in the General Appropriation Act."

The amendment was adopted.

Senator Moore offered the following amendment to the bill:

(74)

Amend committee substitute for H. B. No. 8, Article X, by adding thereto a new Section to be known as Section 1a and reading as follows: "Section 1a. It is further provided that upon the passage of this Act or as soon after as is feasible, the Secretary of State shall mail to all corporations required to pay the franchise tax under the provisions of this Act, supplemental forms for the purpose of computing franchise taxes as provided by this Act for periods from the effective date of this Act to May 1, 1942, and he shall also mail notice to the effect that for failure to file the necessary report and for failure to pay additional amounts which shall accrue as a result of the passage of this Act the right of such corporations to do business will be forfeited on September 1st next; provided that the statutory penalty of twenty-five (25%) shall not accrue against such additional amounts for failure to pay on or before May 1, 1941. The Secretary of State shall have the authority to promulgate such rules and regulations necessary to the immediate enforcement of this Act."

The amendment was adopted.

Senator Metcalfe offered amendment (75) to the bill, which amendment was subsequently withdrawn. (See page 1011.)

Senator York moved that the Senate adjourn until 10:00 o'clock a. m. Monday, April 28, 1941.

The motion was lost by the following vote:

Yeas—11

Beck	Ramsey
Chadick	Stone
Kelley	Vick
Lemens	Weinert
Lovelady	York
Moffett	

Nays—18

Aikin	Hill
Brownlee	Isbell
Cotten	Lanning
Fain	Martin
Formby	Mauritz
Graves	Metcalfe
Hazlewood	Moore

Shivers
SulakVan Zandt
Winfield

Absent—Excused

Smith

Spears

Senator Fain offered the following amendment to the amendment:

(76)

Amend the Metcalfe amendment by adding the following at the proper place:

"Provided that no income derived from the public school funds of this State shall be subject to any tax levied or to be collected under provision of this Article."

On motion of Senator Metcalfe, the amendment to the amendment was tabled.

Senator Moore moved to table the amendment (75) by Senator Metcalfe.

Yeas and nays were demanded, and the motion to table was lost by the following vote:

Yeas—10

Beck
Brownlee
Fain
Martin
MooreShivers
Stone
Weinert
Winfield
York

Nays—19

Aikin
Chadick
Cotten
Formby
Graves
Hazlewood
Hill
Isbell
Kelley
LanningLemens
Lovelady
Mauritz
Moffett
Metcalfe
Ramsey
Sulak
Van Zandt
Vick

Absent—Excused

Smith

Spears

Senator Shivers moved that the Senate recess to 10:00 o'clock a. m. tomorrow.

The motion was lost by the following vote:

Yeas—8

Fain
Martin
Moore
ShiversStone
Weinert
Winfield
York

Nays—21

Aikin
Beck
Brownlee
Chadick
Cotten
Formby
Graves
Hazlewood
Hill
Isbell
KelleyLanning
Lemens
Lovelady
Mauritz
Metcalfe
Moffett
Ramsey
Sulak
Van Zandt
Vick

Absent—Excused

Smith

Spears

Senator Chadick moved a call of the Senate for the purpose of maintaining a quorum.

The President ruled that such a motion was out of order since a quorum is present.

Question—Shall the amendment be adopted?

Senator Ramsey moved that the Senate adjourn until 10:00 o'clock a. m. Monday, April 28, 1941.

The motion was lost by the following vote:

Yeas—13

Beck
Chadick
Fain
Kelley
Martin
Moffett
MooreRamsey
Shivers
Stone
Weinert
Winfield
York

Nays—16

Aikin
Brownlee
Cotten
Formby
Graves
Hazlewood
Hill
IsbellLanning
Lemens
Lovelady
Mauritz
Metcalfe
Sulak
Van Zandt
Vick

Absent—Excused

Smith

Spears

Pending a full reading of the amendment (75), Senator Hill moved that the further reading of the amendment be dispensed with.

Yeas and nays were demanded, and the motion was lost by the following vote:

Yeas—12

Chadick
CottenFormby
Graves

Hazlewood
Hill
Lanning
Lovelady

Mauritz
Metcalf
Ramsey
Sulak

Nays—14

Aikin
Beck
Brownlee
Fain
Lemens
Martin
Moffett

Moore
Shivers
Stone
Van Zandt
Weinert
Winfield
York

Absent

Isbell
Kelley

Vick

Absent—Excused

Smith

Spears

Recess

Senator Shivers moved that the Senate recess to 10:00 o'clock a. m. tomorrow.

The motion was lost by the following vote:

Yeas—12

Beck
Brownlee
Fain
Kelley
Martin
Moffett

Moore
Shivers
Stone
Van Zandt
Weinert
York

Nays—17

Aikin
Chadick
Cotten
Formby
Graves
Hazlewood
Hill
Isbell
Lanning

Lemens
Lovelady
Mauritz
Metcalf
Ramsey
Sulak
Vick
Winfield

Absent—Excused

Smith

Spears

After further debate, Senator Martin moved that the Senate recess to 10:00 o'clock a. m. tomorrow.

The motion was lost by the following vote:

Yeas—14

Beck
Brownlee
Fain

Kelley
Martin
Moffett

Moore
Ramsey
Shivers
Stone

Van Zandt
Weinert
Winfield
York

Nays—15

Aikin
Chadick
Cotten
Formby
Graves
Hazlewood
Hill
Isbell

Lanning
Lemens
Lovelady
Mauritz
Metcalf
Sulak
Vick

Absent—Excused

Smith

Spears

After further debate Senator Shivers moved that the Senate recess to 10:00 o'clock a. m. tomorrow.

The motion was lost by the following vote:

Yeas—14

Beck
Brownlee
Cotten
Fain
Kelley
Martin
Moffett

Moore
Shivers
Stone
Van Zandt
Weinert
Winfield
York

Nays—15

Aikin
Chadick
Formby
Graves
Hazlewood
Hill
Isbell
Lanning

Lemens
Lovelady
Mauritz
Metcalf
Ramsey
Sulak
Vick

Absent—Excused

Smith

Spears

After further debate Senator Shivers moved that the Senate recess to 10:00 o'clock a. m. tomorrow.

The motion prevailed by the following vote:

Yeas—14

Beck
Brownlee
Cotten
Fain
Kelley
Metcalf
Moffett

Moore
Shivers
Stone
Van Zandt
Weinert
Winfield
York

Nays—13

Aikin	Lemens
Chadick	Lovelady
Formby	Mauritz
Graves	Ramsey
Hill	Sulak
Isbell	Vick
Lanning	

Absent

Hazlewood	Martin
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Absent—Excused

Smith	Spears
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The Senate, accordingly, at 7:00 o'clock p. m., took recess until 10:00 o'clock a. m. tomorrow.

SIXTIETH DAY

Continued

(Saturday, April 26, 1941)

The President called the Senate to order at 10:00 o'clock a. m.

Leave of Absence Granted

Senator Smith was granted leave of absence for today on account of important business, on motion of Senator Weinert.

Senate Bills on First Reading

By unanimous consent, the following bills were introduced, read first time and referred by the President to the committees indicated:

By Senator Brownlee:

S. B. No. 440, A bill to be entitled "An Act creating a Special Road Law for Burnet County, Texas; providing that said county may fund or refund into coupon bonds the scrip and time warrants outstanding against its road and bridge fund as of the 12th day of May, 1941; setting forth the method of said funding or refunding; validating all acts of the commissioners' court in issuing said scrip and time warrants; validating said scrip and time warrants; providing the General Laws of the State of Texas shall be applicable to Burnet County when not in conflict herewith; providing this Act shall be cumulative of all general and special laws not in con-

flict herewith; providing a saving clause; and declaring an emergency."

To Committee on Highways and Motor Traffic.

By Senator York:

S. B. No. 441, A bill to be entitled "An Act providing for a closed season on wild deer and wild turkey in Burleson County for a period of five (5) years; prescribing penalties for the violation of this Act; repealing all laws in conflict; and declaring an emergency."

To Committee on Game and Fish.

Senate Concurrent Resolution 41

Senator York, by unanimous consent, offered at this time the following resolution:

S. C. R. No. 41, Authorizing the donation of certain materials of the State Highway Department.

Be It Resolved by the Senate, the House of Representatives Concurring:

Whereas, The State Highway Department of Texas has on hand in Burleson County a large amount of used and discarded galvanized iron which has been left over from old buildings; and

Whereas, The State Highway Department will have no further use therefor; and

Whereas, Such discarded and used galvanized iron can be used to great advantage by Burleson County; therefore, be it

Resolved by the Senate of Texas, the House of Representatives of Texas concurring, That the State Highway Department of Texas be authorized to donate to Burleson County all the discarded and used galvanized iron in the possession of the State Highway Department in such county to be used by Burleson County in a manner beneficial to the citizens of said county.

The resolution was read and referred to the Committee on Public Buildings and Grounds.

Senate Bill 442 on First Reading

Senator Martin moved that Section 5 of Article 3 of the Constitution be suspended to permit his introducing a bill, the provisions of which he explained.

The motion prevailed by the following vote:

Yeas—27

Aikin	Martin
Beck	Mauritz
Brownlee	Metcalfe
Chadick	Moffett
Cotten	Moore
Fain	Ramsey
Formby	Shivers
Graves	Stone
Hazlewood	Sulak
Hill	Vick
Isbell	Weinert
Lanning	Winfield
Lemens	York
Lovelady	

Absent

Kelley Van Zandt

Absent—Excused

Smith Spears

The following bill then was introduced, read first time and referred to the Committee on Civil Jurisprudence.

By Senator Martin:

S. B. No. 442, A bill to be entitled "An Act amending Section 18, Chapter 41, Acts of the Fortieth Legislature First Called Session, as amended by Section 2, Acts of the Forty-sixth Legislature, so as to provide for the filing of a birth record in the county where the birth occurred or where the parents resided at the time of the birth of such child, or where such child now resides; and so as to provide for the registration of a birth that has not been previously registered; and declaring an emergency."

Senate Bill 443 on First Reading

Senator York moved that Section 5 of Article 3 of the Constitution be suspended to permit his introducing a bill, the provisions of which he explained.

The motion prevailed by the following vote:

Yeas—27

Aikin	Hill
Beck	Isbell
Brownlee	Lanning
Chadick	Lemens
Cotten	Lovelady
Fain	Martin
Formby	Mauritz
Graves	Metcalfe
Hazlewood	Moffett

Moore	Vick
Ramsey	Weinert
Shivers	Winfield
Stone	York
Sulak	

Absent

Kelley Van Zandt

Absent—Excused

Smith Spears

The following bill then was introduced, read first time and referred to the Committee on Civil Jurisprudence.

By Senator York:

S. B. No. 443, A bill to be entitled "An Act conferring upon the Board of Directors of the Agricultural and Mechanical College of Texas the power of eminent domain to acquire land for the use of the college; and declaring an emergency."

House Concurrent Resolution 98

On motion of Senator Mauritz and by unanimous consent, the regular order of business was suspended, to permit consideration of H. C. R. No. 98 at this time.

The President laid before the Senate for consideration at this time:

H. C. R. No. 98, Authorizing the State Highway Department of Texas to lend to the City of Groesbeck certain equipment.

The resolution was read and was adopted.

House Bills on First Reading

The following House bills, previously received from the House, were laid before the Senate, read first time and referred to the committees indicated:

H. B. No. 361, to Committee on State Affairs.

H. B. No. 940, to Committee on State Affairs.

H. B. No. 279, to Committee on Civil Jurisprudence.

Committee Substitute House Bill 8 on Passage to Third Reading

The Senate resumed consideration of the pending special order, same being C. S. H. B. No. 8, the omnibus tax bill, on its passage to third reading, with amendment (75) by Senator Metcalfe pending.

Question—Shall the amendment be adopted?

Senator Shivers was permitted to offer at this time the following amendment to the bill:

(77)

Amend Section 2, Article XXI of H. B. No. 8, page 167, by striking out the word "allocated" in line 1, of subdivision (1) and inserting in lieu thereof the words "appropriated and allocated."

The amendment was adopted.

Senator Shivers was permitted to offer at this time the following amendment to the bill:

(78)

Amend Section 2, Article XXI of H. B. No. 8, page 168, by striking out the word "allocated" in line 1, of subdivision (2) and inserting in lieu thereof the words "appropriated and allocated."

The amendment was adopted.

Senator Aikin was permitted at this time to offer the following amendment to the bill:

(79)

Amend committee substitute for H. B. No. 8, Article VIII by striking out the last sentence of Section 1, sub-section (a).

The amendment was adopted.

Record of Vote

Senator Chadick asked to be recorded as voting "nay" on the adoption of the amendment.

Senator Moore was permitted at this time to offer the following amendment to the bill:

(80)

Amend Article VIII, committee substitute for H. B. No. 8, by adding a new Section thereto to be numbered Section 5a and to read as follows:

"At the time the tax herein levied is paid to said tax collector the purchaser shall file with said tax collector the affidavit of such purchaser (or if a corporation the affidavit of the president, vice-president, secretary, or manager) setting forth the then value in dollars of the total consideration received or to be received by such seller or his nominee, whether in money or other thing of value."

The amendment was adopted.

Senator Metcalfe withdrew amendment (75) and offered the following amendment to the bill:

(81)

Amend committee substitute for H. B. No. 8 by adding thereto a new subdivision to be known and numbered as Article _____, and reading as follows, to-wit:

"Section 1. Definitions:

As used herein:

(a) The term 'taxpayer' shall mean and include any person or corporation subject to the tax herein levied.

(b) The term 'individual' shall mean a natural person.

(c) The term 'person' shall mean and include individuals, fiduciaries, partnerships and corporations.

(d) The term 'fiduciary' shall mean and include guardians, trustees, executors, administrators, receivers, conservators or any person, whether individual or corporate, acting in any fiduciary capacity for any person, estate or trust.

(e) The term 'corporation' shall mean and include corporations, joint stock companies, associations or common law trusts, or business trusts, organized or conducted for profit, unless otherwise specifically provided.

(f) The term 'taxable year' shall mean the calendar year, or the fiscal year ending in such calendar year, upon the basis of which net income is computed under this Article.

(g) The term 'fiscal year' means an accounting period of twelve months ending on the last day of any month other than December 31.

The word 'paid' for the purposes of deductions and credits under this Article shall mean 'paid or accrued' or 'paid or incurred' and the terms 'paid or accrued' and 'paid or incurred' shall be construed according to the method of accounting upon the basis of which the net income under this Article is computed. The word 'received' for the purpose of computation of net income under this Article shall mean 'received or accrued' and the words 'received or accrued' shall be construed according to the method of accounting upon the basis of which net income is computed under this Article.

(i) The word 'resident' shall mean any natural person domiciled in the State of Texas, and every other person who maintains a place of abode within the State and spends an ag-

gregate of seven months or more of the income year within the State.

(j) The word 'dividend' means any distribution made by a corporation out of its earnings or profits to its shareholders or members, whether in cash or in other property, or in stock of the corporation, other than stock dividends, as herein defined. 'Stock dividends' means new stock issued, for surplus or profits capitalized, to shareholders in proportion to their previous holdings.

(k) The words 'military or naval forces of the United States' include the marine corps, the coast guard, the army nurse corps, female, and the navy nurse corps, female, but this shall not be deemed to exclude other units otherwise included within such words.

(l) For the purposes of this Article, a period of more than fifteen days shall be counted as a month and a period of fifteen days or less shall not be counted, except as otherwise herein expressly provided.

(m) The term 'Comptroller' or 'State Comptroller' as used herein means the Comptroller of Public Accounts as now constituted.

(n) The word 'and' shall be construed to mean and include the word 'or' and the word 'or' shall be construed to mean and include the word 'and.' Singular nouns or pronouns shall be construed to include the plural form.

(o) The words 'include' and 'including' when used in a definition contained in this Article shall not be deemed to exclude other things otherwise within the meaning of the term defined.

Sec. 2. Persons and Subject Taxable; Rates; When and to Whom the Tax Must Be Paid:

(a) There shall be assessed, levied, collected and paid a tax on all net incomes, by every resident person within the State, or his personal representative in case of death; and by every non-resident of the State upon such net income as is derived from property located or business transacted or from any other source within the State, except as hereinafter expressly exempted. The tax herein imposed shall first be assessed, levied, collected and paid in the calendar year 1942 with respect to the taxable net income for the period from the effective date of this Ar-

ticle to December 31, 1941, in case the taxable year is on a calendar year basis. If the taxable year is on a fiscal year basis, the tax herein imposed shall first be assessed, levied, collected and paid on or before the fifteenth day of the third month after the close of the fiscal year immediately after the effective date of this Article, and shall be based upon the taxable net income for the period from the effective date of this Article to the end of the fiscal year.

In computing the first tax due under this Article, the taxable net income, if for a period of less than one full year, shall be placed on an annual basis and the tax computed thereon for a full year, and the amount of tax due shall be that proportion of the tax for a full year as the period for which the tax is due is to one full year. After the first assessment levying, collection and payment of the tax as outlined above, the tax shall be assessed, levied, collected and paid annually thereafter, as provided by this Article.

The tax should be paid to the Comptroller in full when the return is filed, or in four equal installments as follows: The first installment on or before March 15, the second installment on or before June 15, the third installment on or before September 15, and the fourth installment on or before December 15.

If any installment is not paid on or before the date fixed for payment, the whole amount of tax unpaid shall be paid upon notice and demand by the collector.

(b) Rates:

(1) Individuals

The tax to be assessed, levied, collected and paid upon the taxable net income as herein defined of all persons, other than corporations, shall be computed at the rate of two per cent (2%).

(2) Corporations

The tax to be assessed, levied, collected and paid on the taxable net income as herein defined of corporations shall be computed at the rate of two per cent (2%).

Sec. 3. Estates, Trusts and Fiduciaries:

(a) The tax imposed by this Article shall apply to estates and trusts, which tax shall be levied, collected and paid annually upon and

with respect to the income of estates or of any kind of property held in trust, including:

(1) Income received by estates of deceased persons during the period of administration or settlement of the estate.

(2) Income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests.

(3) Income held for future distribution under the terms of the will or trust.

(4) Income which is to be distributed to the beneficiaries periodically, whether or not at regular intervals, and the income collected by a guardian of an infant to be held or distributed as the court may direct.

(5) Income of an estate during the period of administration or settlement permitted by subdivision (c) of this Section to be deducted from the net income upon which the tax is to be paid by the fiduciary.

(b) The fiduciary shall be responsible for making the return of income for the estate or trust for which he acts, whether such income be taxable to the estate or trust or to the beneficiaries thereof. The net income of an estate or trust shall be computed in the same manner and on the same basis as provided in this Article for individual taxpayers, except that there shall be allowed as a deduction any part of the gross income, which, pursuant to the terms of the will or deed creating the trust, is paid to or held for the United States, any state, territory or political subdivision thereof, or the District of Columbia, or any corporation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual; and in cases under paragraphs (4) and (5) of subdivision (a) of this Section, the fiduciary shall include in the return a statement of each beneficiary's distributive share of such net income, whether or not distributed before the close of the taxable year for which the return is made.

(c) In cases under paragraphs (1), (2) and (3) of subdivision (a) of

this Section, the tax shall be imposed upon the estate or trust with respect to the net income of the estate or trust and shall be paid by the fiduciary, except that in determining the net income of the estate or any deceased person during the period of administration or settlement, there may be deducted the amount of any income properly paid or credited to any legatee, heir or other beneficiary. In such cases, the estate or trust shall be allowed the same exemptions as are allowed to single persons under Section 18 of this Article, and in such cases an estate or trust created by a person not a resident and an estate of a person not a resident shall be subject to tax only to the extent to which individuals other than residents are liable under this Article.

(d) In cases under paragraphs (4) and (5) of subdivision (a) of this Section, if the distribution of income is in the discretion of the fiduciary, either as to the beneficiaries to whom payable or as to the amounts to which any beneficiary is entitled, the tax shall be imposed upon the estate or trust in the manner provided in subdivision (c) of this Section, but without the deduction of any amounts of income paid or credited to any such beneficiary. In all other cases under paragraphs (4) and (5) of subdivision (a) of this Section, the tax shall not be paid by the fiduciary, but there shall be included in computing the net income of each beneficiary his distributive share, whether distributed or not, of the net income of the estate or trust for the taxable year, or, if his net income for such taxable year is computed upon the basis of which the net income of the estate or trust is computed, then his distributive share of the net income of the estate or trust for any accounting period of such estate or trust ending within the fiscal year or calendar year upon the basis of which such beneficiary's net income is computed. In such cases the income of a beneficiary not a resident, derived through such estate or trust, shall be taxable only to the extent provided in this Article for persons other than residents.

(e) A trust, created by an employer as a part of a stock bonus, pension or profit-sharing plan for the exclusive benefit of some or all of his employees, or both, for the purpose of distributing to such em-

ployees the earnings and principal of the fund accumulated by the trust in accordance with such plan, shall not be taxable under this Section, but any amount actually distributed or made available to any distributee shall be taxable to him in the year in which so distributed or made available to the extent that it exceed the amounts paid in by him.

Sec. 4. Organizations Exempted:

The following organizations shall be exempted from taxation under this Article.

(a) Labor, agricultural or horticultural organizations.

(b) Fraternal beneficiary societies, orders or associations (1) operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system; and (2) providing for the payment of life, sick, accident, or other benefits to the members of such society, order, association, or other dependents.

(c) Cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit; and any corporation chartered solely for burial purposes as a cemetery corporation and not permitted by its charter to engage in any business not necessarily incident to that purpose, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(d) Corporations, and any community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(e) Business leagues, chambers of commerce, or boards of trade, not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(f) Civic leagues, or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular community, and the net earnings of which are devoted ex-

clusively to charitable, educational or recreational purposes.

(g) Clubs organized and operated exclusively for pleasure, recreation, and other non-profit purposes, no part of the net earnings of which inures to the benefit of any private shareholder.

(h) Benevolent life insurance associations of a purely local character, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations; provided that 85 per cent or more of the income consists of amounts collected from members for the sole purpose of meeting losses and expenses.

(i) Farmers or other mutual hail, cyclone, casualty or fire insurance companies or associations (including interinsurance and reciprocal underwriters) the income of which is used or held for the purpose of paying losses or expenses.

(j) Farmers, fruit growers or like organizations, organized and operated as sales agents for the purpose of marketing the products of members and turning back to them the proceeds of sales, less necessary selling expenses, on the basis of the quantity of products furnished by them.

(k) Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this Article.

(l) Federal Land Banks, national farm-loan associations and federal intermediate credit banks.

(m) Corporations whose sole business consists of holding the stocks of other corporations for the purpose of controlling the management of affairs of such other corporations, when and if said other corporations make returns under this Article.

Sec. 5. Tax and Debt:

Every tax imposed by this Article, and all increases, interest, and penalties thereon, shall be from the time it is due and payable a personal debt from the person liable to pay same, to the State of Texas, and shall be a lien upon the real and personal property of said person, wherever located within this State.

Sec. 6. Inventories:

Whenever, in the opinion of the Comptroller, the use of inventories is necessary in order to determine clearly the income of any taxpayer, inventories shall be taken by such taxpayer upon such basis as the Comptroller may prescribe, conforming as nearly as may be to the best accounting practice in the trade or business and most clearly reflecting the income.

Sec. 7. Basis of Return of Net Income:

(a) The net income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be) in accordance with the method of accounting regularly employed in keeping the books of such taxpayer; but if no such method of accounting has been employed, or if the method employed does not clearly reflect the income, the computation shall be made upon such basis and in such manner as in the opinion of the Comptroller does clearly reflect the income. If the taxpayer has no annual accounting period or does not keep books, the net income shall be computed on the basis of the calendar year.

(b) If a taxpayer changes his accounting period from fiscal year to calendar year, from calendar year to fiscal year, or from one fiscal year to another, the net income shall, with the approval of the Comptroller, be computed on the basis of such new accounting period, subject to the provisions of Section 24 of this Article.

(c) Under regulations prescribed by the Comptroller, a taxpayer who regularly sells or otherwise disposes of personal property on the installment plan may return as income therefrom in any taxable year that proportion of the installment payments actually received in that year which the gross profit realized or to be realized when the payment is completed, bears to the total contract price. In the case of (1) a casual sale or other casual disposition of personal property when the profit is taxable income for a price exceeding One Thousand (\$1,000) Dollars or (2) a sale or other disposition of real property when the profit is taxable income, if in either case the initial payments do not exceed one-fourth of the purchase price,

the income may be returned on the basis and in the manner above prescribed in this subdivision. As used in this Section, the term 'initial payments' means the payments received in cash or property other than evidences of indebtedness of the purchaser during the taxable period in which the sale or other disposition is made.

(d) An individual carrying on business in a partnership shall be liable for income tax only in his individual capacity, and shall include in his gross income the distributive share of the net income of the partnership received by him or distributable to him during the income year.

(e) Every individual, taxable under this Article, who is a beneficiary of an estate or trust, shall include in his gross income the distributive share of the net income of the estate or trust, received by him or distributable to him during the income year. Unless otherwise provided in the law, the will, deed or other instrument creating the estate, trust or fiduciary relation, the net income shall be deemed to be distributed or distributable to the beneficiaries (including the fiduciary as a beneficiary in the case of income accumulated for future distribution) ratably, in proportion to their respective interests.

Sec. 8. Net Income Defined:

The term 'Net Income' means the gross income of a taxpayer less the deductions authorized by this Article.

Sec. 9. Gross Income Defined:

(a) The term 'gross income' as used in this Article includes gains, profits and income derived from salaries, wages or compensation for personal services of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, provided such property has not been held longer than one year, growing out of the ownership or use of or interest in such property; also from interest, rents, dividends or securities, provided such securities have not been held longer than one year or the transaction of any business carried on for gain or profit. The amount of all such items shall be included in the gross income for the taxable year in which received by the taxpayer, unless, under the

methods of accounting permitted by this Article, any such amounts are to be properly accounted for as of a different period. This Section shall be construed to include all other gains and income not listed, which are not expressly exempted from taxation under this Article.

(b) Exclusions From Gross Income:

The following items shall be excluded from gross income and shall be exempt from taxation under this Article:

(1) The proceeds of life insurance policies and contracts paid upon the death of the insured to individual beneficiaries or to the estate of the insured.

(2) The amount received by insured as a return of premiums or premiums paid by him under life insurance, endowment or annuity contracts, either during the term or at the maturity of the term mentioned in the contract or upon the surrender of the contract.

(3) The value of property acquired by gift, bequest, devise, or descent (but the income from such property shall be included in gross income).

(4) Any amounts received through health or accident insurance or under workmen's compensation acts, as compensation for personal injuries or sickness, plus the amount of any damages received, whether by suit or agreement, on account of such injuries or sickness.

(5) Amounts received as pensions or bonuses from the United States for Services rendered by the beneficiary or another in the military or naval forces of the United States in time of war, or as a state pension for services rendered by the beneficiary or another for which the State is paying a pension.

(6) The rental value of a dwelling house and appurtenances thereof furnished to a clergyman as part of his compensation and occupied by him and his immediate family.

Sec. 10. Deductions From Gross Income:

In computing net income there shall be allowed as deductions:

(a) All the ordinary and necessary expenses paid during the income year in carrying on any trade or business or in the production of in-

come required to be reported as gross income under this Article, including

(1) As to individuals, payments made within the taxable year for wages or other compensation for services actually rendered in carrying on the profession, vocation or business from which the taxable income is derived, provided no deduction shall be allowed unless there be reported the name and address and amount paid each person to whom a sum of One Thousand (\$1,000) Dollars or more shall have been paid during the income year;

(2) As to corporations, payments made within the year for wages of employees and salaries of officers, if reasonable in amount, for services actually rendered in producing such taxable income; provided no deduction shall be allowed under this paragraph unless there be reported the name and address and amount paid to each such employee or officer to whom a compensation of One Thousand (\$1,000) Dollars or more was paid during the income year;

(3) Rentals or other payments required to be made a condition to the continued use or possession, for purposes of the trade of business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity; provided no deduction shall be allowed under this paragraph unless there be reported the name and address and amount paid to each person receiving such rentals or other required payments to whom Seven Hundred (\$700) Dollars or more shall have been paid during the income year;

(4) Interest paid during the income year on indebtedness, except interest on indebtedness incurred or continued to purchase or carry obligations or securities, the interest upon or income from which is wholly exempt from taxation under this Article; provided no deduction shall be allowed under this paragraph unless the taxpayer reports the name, address, amount paid each, and the form of indebtedness of the parties to whom such interest was paid in the amount of Five Hundred (\$500) or over during the income year.

(b) Losses actually sustained during the income year, if not compensated for by insurance or otherwise:

(1) If incurred in trade or business, or

(2) If incurred in any transaction entered into for profit, though not connected with trade or business, or

(3) If property not connected with trade or business if the loss arises from fires, storms, shipwreck or other casualty or from theft.

(4) The losses allowed under this subdivision (b) shall only be allowed in so far as they arise from business done, or property owned in the State of Texas, the income from which would be taxable under this Article.

(5) Provided no deduction shall be allowed under this subdivision (b) for any losses claimed to have been sustained in any sale or other disposition of shares of stock or securities where it appears that within thirty days before or after the date of sale or other disposition the taxpayer has acquired (other than by bequest or inheritance) or has entered into a contract or option to acquire substantially identical property, and the property so acquired is held by the taxpayer for any period after such sale or other disposition.

(c) Debts ascertained to be worthless and actually charged off the taxpayers' books during the year, (or, in the discretion of the State Comptroller a reasonable addition to a reserve for bad debts); and when satisfied that a debt is recoverable only in part, the State Comptroller may allow such debt, in an amount not in excess of the part charged off within the taxable year, as a deduction.

(d) A reasonable allowance for the exhaustion, wear, and tear of property the income from which is required to be included in gross income under this Article, used in the trade or business, including a reasonable allowance for obsolescence.

(e) In the case of mines, other natural deposits, and timber, except oil and gas wells, a reasonable allowance for a depletion and for depreciation of improvements according to the peculiar conditions in each case, based upon cost, including cost of development not otherwise deducted; provided that in the case of such properties acquired prior to the effective date of this Article, the fair market value of the property (or the taxpayers' interest therein) on that date shall be taken in lieu of cost up to that date; provided further that in the case of mines discovered

by the taxpayer on or after the effective date of this Article, and not acquired as the result of a purchase of a proven tract or lease, where the fair market value of the property is materially disproportionate to the cost, the depletion allowance shall be based upon the fair market value of the property at the date of the discovery or within thirty days thereafter; but such depletion allowance based on discovery value shall not exceed fifty per cent of the net income of the taxpayer (computed without allowance for depletion) from the property upon which the discovery was made, except that in no case shall the depletion allowance be less than it would be if computed without reference to discovery value.

Discoveries shall include minerals in commercial quantities contained within a vein or deposit discovered in an existing mine or mining tract by the taxpayer after the effective date of this Article, if the vein or deposit thus discovered was not merely the uninterrupted extension of a continuing commercial vein or deposit already known to exist, and if the discovered minerals are of sufficient value and quantity that they could be separately mined and marketed at a profit.

In the case of oil and gas wells the allowance for depletion shall be twenty-seven and one-half per cent of the gross income from the property during the taxable year; provided that such allowance shall not exceed fifty per cent of the net income of the taxpayer (computed without allowance for depletion) from the property, except that in no case shall the depletion allowance be less than it would be if computed without reference to this paragraph.

Such reasonable allowance in all the above cases shall be made under rules and regulations to be prescribed by the Comptroller. In the case of leases, the deductions allowed by this subdivision shall be equitably apportioned between the lessor and lessee.

(f) Contributions or gifts made within the taxable year to or for the use of:

(1) The United States, or any State, territory or any political subdivision thereof or to the District of Columbia for exclusively public purposes.

(2) Any corporation, trust, community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(3) Posts or organizations of war veterans or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units, or societies are organized in the United States or any of its possessions, and if no part of their net earnings inures to the benefit of any private shareholder or individual.

(4) A fraternal society, order, or association operating under the lodge system, but only if such contributions or gifts are to be used exclusively for religious, charitable, scientific, literary or educational purposes, or for the prevention of cruelty to children or animals; to an amount which in all the above cases combined shall not exceed fifteen (15%) per cent of the taxpayer's net income as computed without the benefit of this subdivision. Such contributions and gifts shall be allowed as deductions only if verified under rules and regulations prescribed by the Comptroller.

In the case of a non-resident taxpayer, the deductions under this subdivision shall be allowed only as to contributions or gifts made to corporations or associations organized or incorporated under the laws of this State, or to this State or any political subdivision thereof for exclusively public purposes.

(g) Taxes (other than income taxes, inheritance taxes, or local or special assessments tending to increase the value of the property assessed) paid or accrued within the income year, imposed by the authority of the United States or any of its possessions, or by the authority of any state, territory, county, school district, municipality, or other political subdivision of any state or territory, or by the authority of this State, or any county, school district, or other defined district, municipality or other political subdivision of this State.

(h) In the case of taxpayers who keep regular books of account upon an accrual basis and in accordance

with standard accounting practice, reserves for bad debts and for contingent liabilities under such rules and regulations as the Comptroller may prescribe. If at any time the Comptroller shall deem the reserve excessive in amount, it may restore such excess to income, either in a subsequent year or as a part of the income of the income year and assess it accordingly.

(i) Dividends received during the taxable year from stock in any corporation, the income of which was assessable for the preceding year under the provisions of the income tax laws of this State; provided that when only a part of the income of any such corporation was assessable, only a corresponding part of the dividends received therefrom shall be deductible; provided that deductions under this paragraph shall be made in conformity with rules and regulations of the Comptroller.

(j) In case of a life insurance company, the net additions if any, made within the year to legal reserve funds and all sums paid by the company within the year on policy and annuity contracts.

Sec. 11. Proration of Credits, Etc., to Non-Residents:

In the case of a taxpayer, other than a resident of this State, the deductions, exemptions and credits allowed by this Act shall be allowed only if, and to the extent that, they are connected with income arising from sources within this State and taxable under this Act to a non-resident taxpayer; and the proper apportionment and allocation of the deductions with respect to sources of income within and without this State shall be determined under rules and regulations to be prescribed by the Comptroller.

Sec. 12. Items Not Deductible:

The following items shall not be deductible from gross income:

(a) Personal, living, or family expenses.

(b) Any amount paid out for new buildings or for permanent improvements or betterments, made to increase the value of any property or estate.

(c) Any amount expended to restore property for which allowance is or has been made.

(d) Premiums paid on any life insurance policy covering the life of

any officer or employer of any individual financially interested in any trade or business carried on by any taxpayer, when the taxpayer is directly or indirectly a beneficiary under such policy.

Sec. 13. Determination of Gain or Loss:

(a) For the purpose of determining the gain or loss from the sale or other disposition of property, real, personal, or mixed, the basis shall be the cost thereof, plus amounts expended for permanent improvements or betterments not otherwise deducted under this Article; provided that such basis shall be diminished by the amounts of the deductions for depreciation, obsolescence and depletion which have, since the acquisition of the property, been allowed in respect to such property under this Article; provided further that the property has not been held longer than one year.

(b) In the case of property disposed of after being held one year or longer no gain or loss shall be recognized.

(c) In the case of property acquired by gift, the basis shall be the same as it would be in the hands of the donor or the last preceding owner by whom it was not acquired by gift. If the facts necessary to determine such basis are unknown to the donee, then the Comptroller shall, if possible, obtain such facts from such donor or last preceding owner, or any other person cognizant thereof. If the Comptroller finds it impossible to obtain such facts, gain or loss shall be determined as provided in subdivision (a) and (b) of this Section except that the word 'cost' as used in such subdivisions shall be deemed to mean the fair market value of such property as found by the Comptroller as of the date or approximate date at which, according to the best information the Comptroller is able to obtain, such property was acquired by such donor or last preceding owner.

(d) If property was acquired by bequest, devise or intestacy, gain or loss shall be determined as provided in subdivision (a) or (b) of this Section, except that the word 'cost' as used in said subdivisions shall mean the fair market value of such property at the time of death of decedent. In the case of property transmitted in trust to pay the income for life

to or upon the order or direction of the grantor, title to such property to pass at the death of such grantor with the right reserved to the grantor at all times prior to his death to revoke the trust, gain or loss in the hands of persons entitled to the property after the grantor's death shall, after said death, be determined in the same manner as if the trust instrument had been a will executed on the day of the grantor's death.

Sec. 14. Exchanges of Property:

(a) Upon the sale or exchange of property the entire amount of gain or loss, determined under Section 13 of this Article, shall be recognized, except as hereinafter provided in this Section:

(b) No gain or loss shall be recognized:

(1) If property held for productive use in business or trade or for investment (not including stock in trade or other property held primarily for sale, nor stocks, bonds, notes, choses in action, certificates of trust or beneficial interest, or other securities or evidence of indebtedness or interest), is exchanged solely for property of like kind to be held for productive use in trade or business or for investment.

(2) If common stock in a corporation is exchanged solely for a common stock in the same corporation, or if preferred stock in a corporation is exchanged solely for preferred stock in the same corporation.

(3) If stock or securities in a corporation a party to a reorganization are, in pursuance of the plan of reorganization, exchanged solely for stock or securities in such corporation or in another corporation a party to the reorganization.

(4) If property is transferred to a corporation by one or more persons solely in exchange for stock or securities in such corporation, and immediately after the exchange such person or persons are in control of the corporation; but in the case of an exchange by two or more persons this subdivision shall only apply if the amount of the stock and securities received by each is substantially in proportion to his interest in the property prior to the exchange.

(5) If property (as a result of its destruction in whole or in part,

theft, or seizure, or an exercise of the power of requisition or condemnation, or the threat or imminence thereof) is compulsory or involuntarily converted into property similar or related in service or use to the property so converted, or into money which is forthwith in good faith, under regulations prescribed by the Comptroller expended in the acquisition of other property similar or related in service or use to the property so converted, or in the acquisition or control of a corporation owning such other property, or in the establishment of a replacement fund; but if any part of the money is not so expended, the gain, if any, shall be recognized, but in an amount not in excess of the money which is not so expended.

(c) If there is distributed, in pursuance of a plan of reorganization to a shareholder in a corporation a party to the reorganization, stock or securities, in such corporation or in another corporation a party to the reorganization, without the surrender by such shareholder of stock or securities in such corporation, no gain to the distributee from the receipt of such stock or securities shall be recognized.

(d) If an exchange would be within the provisions of subdivision (1), (2), (3) or (4) of Sub-section (5) of this Section, if it were not for the fact that the property received in exchange consists not only of property permitted by such subdivisions to be received without the recognition of gain, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property. No loss shall be recognized under the provisions of this Sub-section (d)

(e) The distribution, in pursuance of a plan of reorganization, by or on behalf of a corporation a part to a reorganization, of its stocks or securities or of stock or securities in a corporation a party to the reorganization, shall not be considered a distribution of earnings or profits within the meaning of Section 16, Sub-section (a) of this Article, for the purpose of determining the taxability of subsequent distribution by the corporation.

(f) As used in this Section:

(1) The term 'reorganization' means (a) a merger or consolidation (including the acquisition by one corporation of at least a majority of the voting stock and at least a majority of the total number of shares of all other classes of stock of another corporation or substantially all the properties of another corporation), or (b) a transfer by one corporation of all or a part of its assets to another corporation if immediately after the transfer the transferrer or its stockholders or both are in control of the corporation to which the assets are transferred, or (c) a recapitalization, or (d) a mere change in identity, form or place of organization, however effected.

(2) The term 'a party to a reorganization' includes both corporations in the case of an acquisition by one corporation of at least a majority of the voting stock and at least a majority of the total number of shares of all other classes of stock of another corporation.

(3) The term 'control' means the ownership of at least eighty (80%) per cent of the voting stock and at least eighty (80%) per cent of the total number of shares of all other classes of stock in the corporation.

Sec. 15. Distributions and Dividends:

(a) For the purpose of this Article, every distribution is presumed to be made out of earnings or profits to the extent thereof, except as herein expressly provided, and from the most recently accumulated earnings or profits. Any earnings or profits accumulated, or increase in value of property accrued, before the effective date of this Article, may be distributed exempt from tax after the earnings or profits accumulated after the effective date of this Article have been distributed, but any such tax free distribution shall be applied against and reduce the basis of the stock provided in Section 13 of this Article.

(b) Distributions in Liquidation:

Amounts distributed in complete liquidation of a corporation shall be treated as in full payment in exchange for the stock, and amounts distributed in partial liquidation of a corporation shall be treated as in part or full payment for the stock.

The gain or loss to the distributee resulting from such exchange shall be determined under Section 13 of this Article, but shall be recognized only to the extent provided in Section 14. In the case of amounts distributed in partial liquidation (other than a distribution within the provisions with a reorganization) the part of such distribution which is properly chargeable to capital account shall not be considered a distribution of earnings or profits within the meaning of Sub-section (a) of this Section for the purpose of determining the taxability of subsequent distribution by the corporation.

(c) If any distribution (not in partial or complete liquidation) made by a corporation to its shareholders is not out of increase in value of property accrued before the effective date of this Article and is not out of earnings or profits, then the amount of such distribution shall be applied against and reduce the basis of the stock provided in Section 13, and if in excess of such basis, such excess shall be taxable in the same manner as a gain from the sale or exchange of property. The provisions of this paragraph shall also apply to distributions from depletion reserves based on the discovery value of mines and other natural deposits.

(d) Stock dividends when received by a shareholder shall not be subject to tax; but if before or after the distribution of any such dividend the corporation proceeds to cancel or redeem its stock at such time and in such manner as to make the distribution and cancellation or redemption in whole or in part essentially equivalent to the distribution of a taxable dividend, the amount so distributed in redemption or cancellation of the stock shall be treated as a taxable dividend. Any stock dividend shall be considered in computing gain upon the disposition of the stock upon which the stock dividend has been declared or of the stock included in any such stock dividend, as provided in Section 14 of this Article.

(e) As used in this Section, the term 'amounts distributed in partial liquidation' means a distribution by a corporation in complete cancellation of, or redemption of a part of its stock, or one of a series of distributions in complete cancellation or redemption of all or a portion of its stock.

Sec. 16. Allocation and Apportionment of Income:

Persons engaged in business within and without the State of Texas shall be taxed only on such income as is derived from business transacted and property located within this State. The amount of such income apportionable to Texas may be determined by an allocation and separate accounting thereof, when, in the judgment of the Comptroller, that method will reasonably reflect the income properly assignable to this State, but otherwise in the following manner:

(a) Interest, dividends, rent and royalties not received in connection with the transaction of business, and gains from the sale of property (as provided in Section 9 of this Article) not held, owned or used in connection with business (less related expenses, if any), shall be allocated to Texas if received from sources within the State of Texas, and if received from sources without the State of Texas such income shall be allocated outside the State of Texas, and the balance, hereinafter referred to as business income, shall be allocated to Texas and shall be taxable as hereinafter set forth.

(b) If the trade or business of the taxpayer is carried on entirely within the State, the tax shall be imposed on the entire business income, but if such trade or business is carried on partly within and partly without the State, the tax shall be imposed only on the portion of the business income reasonably attributable to the trade or business within the State, to be determined as follows:

(1) Interest, dividends, rent and royalties (less related expenses, if any) received in connection with business in the State, shall be allocated to the State, and where received in connection with business outside of the State shall be allocated outside of the State.

(2) Gains from the sale of capital assets or property (as provided in Section 9 of this Article) held, owned or used in connection with the trade or business of the taxpayer but not for sale in the regular course of business, shall be allocated to the State if the property sold is real or tangible personal property situated in the State or intangible property connected with the business in the State; otherwise, such gains shall be allocated outside of the State.

(3) Net income of the above classes having been separately allocated and deducted as above provided, the remainder of the net business income of the taxpayer shall be allocated and apportioned as follows:

(a) Where income is derived from business other than the manufacture and sale of tangible personal property, the portion thereof attributable to business within the State shall be taken to be such percentage of the total of such income as the tangible property and the business within the State bear to the total tangible property and total business, the percentage of tangible property and of business being separately determined as hereinafter provided and the two percentages averaged.

For purposes of the foregoing computation, the value of the tangible property shall be taken to be the average value of the tangible property held and owned by the taxpayer in connection with such business during the year for which the income is returned excluding any property the income of which is not taxable or which is separately allocated under the foregoing provisions of this Article.

The business of the taxpayer shall be measured by the amount which the taxpayer has paid out during the year for which the income is returned for wages, salaries or other compensation to employees and for the purchase of goods, materials, and supplies consumed or sold in the regular course of business, plus the amount of all receipts during the year from sales and other sources connected with said business, excluding, however, receipts from the sale of capital assets and property not sold in the regular course of business and also receipts from interest, dividends, rents and royalties separately allocated as above provided.

Accounts payable for compensation and purchases and accounts receivable from sales and other sources arising from business during the year, shall be included in the formula if the taxpayer's return is made on the accrual basis.

For the purpose of this subdivision, payments for wages, salaries and other compensation shall be assigned to the office, agency or other place of business of the taxpayer at which the employee chiefly works, or from

which he is sent out, or with which he is chiefly connected.

Payments for purchases shall be assigned to the office, agency or place of business of the taxpayer at or from which such purchases are chiefly handled and attended to with respect to the negotiation and execution.

Receipts from sales and other sources shall be assigned to the office, agency or place of business of the taxpayer at or from which the transaction giving rise to such receipts are chiefly handled and attended to with respect to the negotiation and execution.

For the purpose of this Section, the word 'sale' shall include exchange and the word 'manufacture' shall include the extraction and recovery of natural resources and all processes of fabricating and curing.

For the purpose of this Section, the term 'Tangible property' shall mean real estate and corporal personal property, and shall not mean money, bank deposits, shares of stock, bonds, notes, credits, evidence of debt, choses in action or evidence of interest in property.

Sec. 17. Allocation in Special Cases.

If any taxpayer believes that the method of allocation and apportionment hereinbefore prescribed as administered by the Comptroller and applied to his business has operated or will so operate as to subject him to taxation on a greater portion of his net income than is reasonably attributable to business or sources within the State, he shall be entitled to file with the Comptroller a statement of his objections and of such alternative method of allocation and apportionment as he believes to be proper under the circumstances with such detail and proof and within such time as the Comptroller may reasonably prescribe; and if the Comptroller shall conclude that the method of allocation and apportionment theretofore employed is in fact inapplicable and inequitable, he shall redetermine the taxable income by such other method of allocation and apportionment as seems best calculated to assign to the State for taxation, the portion of the income reasonably attributable to business and sources within the State, not exceeding, however, the amount which would be arrived at by application of the statutory rules for apportionment.

Sec. 18. Exemptions:

(a) There shall be deducted from the net income the following exemptions:

(1) In the case of a single individual, or a married individual not living with husband or wife, a personal exemption of One Thousand (\$1,000.00) Dollars.

(2) In the case of a head of a family, or a married individual living with husband or wife, a personal exemption of Two Thousand (\$2,000.00) Dollars. A husband and wife living together shall receive but one personal exemption of Two Thousand (\$2,000.00) Dollars against their aggregate net income; and in case they make separate returns, the personal exemption of Two Thousand (\$2,000.00) Dollars shall be divided equally between them.

(3) For each person (other than husband or wife) who is dependent upon and receives his chief support from the taxpayer, an exemption of Four Hundred (\$400.00) Dollars, if such dependent is under twenty-one years of age or is incapable of support because mentally or physically defective.

(4) In the case of a non-resident individual, the exemptions allowed in subdivisions (1), (2) and (3) of this Section shall be allowed in the same proportion that the net income of such non-resident individual taxable under this Article bears to the total net income of such individual.

(b) The status on the last day of the taxable year shall determine the right of the taxpayer to exemptions provided in this Section. A taxpayer shall be entitled to such exemptions for husband or wife who has died within the taxable year; provided that in no case shall the exemptions allowed under subdivision (1) and (2) of subdivision (a) of this Section exceed Two Thousand (\$2,000.00) Dollars.

Sec. 19. Credits:

(a) Non-residents:

Whenever a taxpayer other than a resident of this State has become liable to income tax to the State or county where he resides, upon his net income for the taxable year derived from sources within this State and subject to taxation under this Article, the amount of income tax payable to this State under this Article shall be credited with such pro-

portion of the tax payable by him to the state where he resides as his income subject to taxation under this Article bears to his entire income upon which the tax is so payable to such other state was imposed; provided that such credits shall be allowed only if the laws of said state (1) grant a substantially similar credit to residents of this State subject to income tax under such laws, or (2) impose a tax upon the income of its residents derived from sources within this State and exempt from taxation the income of residents of this State. No credit shall be allowed against the amount of the tax on any income taxable under this Article which is exempt from taxation under the laws of such other state.

(b) In any case where a taxpayer under this Article has, under the laws of the State of Texas, paid taxes during the income year in respect to the intangible property or assets of his business as a going concern, the earnings or income of which are taken into consideration in determining such value, or in any case where a taxpayer under this Article has, under the laws of this State, paid taxes during the income year upon his business, the gross receipts or gross net earnings of which are taken as the measure of the tax, such taxes shall, at the option of the taxpayer, be allowed either as a deduction from gross income, as provided in Section 10, sub-section (g) of this Article, or as a credit against the amount of tax computed with respect to the total net income of such taxpayer (provided that if such taxpayer elects to credit such taxes against his net income tax, as allowed in this paragraph, he shall not be allowed to deduct such taxes in accordance with Section 10, sub-section (g) of this Article) but the tax computed with respect to his total net income shall not be decreased by such credit in any greater proportion than his net income derived solely from the business upon which the tax or taxes hereinbefore set forth are levied bears to his total net income from all sources, before the deduction of exemptions as provided in Section 18 of this Article. The optional credit allowed in this Section shall not be allowed as to the payment of occupation taxes upon the sale of cigarettes, as provided in Chapter 73, Laws of 1931, Regular Session, or the occupation tax on the sale of gasoline as

provided in Article 7065, Revised Civil Statutes of 1925, as amended; or the tax upon corporate franchises as provided in Chapter 3, Title 122, Revised Civil Statutes of 1925, as amended; provided this shall not be construed to disallow deduction for these taxes under Section 10, sub-section (g) of this Article.

Sec. 20. Returns:

(a) Every individual resident, having a net income during the income year of One Thousand (\$1,000.00) Dollars or over, if single, or if married and not living with husband or wife; or having a net income for the year of Two Thousand (\$2,000.00) Dollars or over, if married and living with husband or wife; or having a gross income of Four Thousand (\$4,000.00) Dollars, regardless of net income, shall make a return under oath, stating specifically the items of his gross income and the deductions and exemptions allowed by this Article.

(b) If a husband and wife living together have an aggregate net income of Two Thousand (\$2,000.00) Dollars or over, or an aggregate gross income of Four Thousand (\$4,000.00) Dollars or over, each shall make such a return, unless the income of each is included in a single joint return.

(c) If the taxpayer is unable to make his own return, the return shall be made by his duly authorized agent or by his guardian or any other person charged with the care of the person or property of such taxpayer.

(d) Every partnership shall furnish a return to the Comptroller in such manner and form, and setting forth such facts as the Comptroller shall deem necessary to enforce the provisions of this Article; such statement shall be made upon the oath or affirmation of one of the members of said partnership.

(e) Individuals carrying on business in partnership shall be liable for income tax only in their individual capacity. There shall be included in computing the income of each partner his distributive share, whether distributed or not, of the net income of the partnership for the income year, when practical, partners shall be required to file individual returns on the basis of a fiscal or calendar year which coincides with that upon which the partnership return is filed. When partners cannot file their individual income tax returns on the basis of the fiscal or calendar year which

coincides with that upon which the partnership return is filed, then the share of the partner's income from the partnership for the year for which the partnership return is made shall be reported by the partner in the year for which his income tax return is made. The net income of the partnership shall be computed in the same manner and on the same basis as provided for computation of the income of persons other than corporations.

(f) Every corporation subject to taxation under this Article shall make a return to the Comptroller, stating specifically the items of gross income and the deductions and such other facts as the Comptroller may deem necessary to the enforcement of the provisions of this Article. Such statement shall be made upon the oath or affirmation of the president, vice president, or other principal officer, and the treasurer of said corporation, and in the case of corporations in liquidation or in the hands of a receiver, such returns shall be made upon the oath or affirmation of the person responsible for the conduct of the affairs of such corporation.

(g) Whenever in the judgment of the Comptroller any person shall be subject to income tax under the provisions of this Article, the Comptroller shall notify such person to make report to him in such manner and form as he shall prescribe, setting forth therein such information as he may deem necessary to enforce the provisions of this Article.

(h) If any person required under this Article to file an income tax return, fails to file such return within the time prescribed by law, or as extended under the provisions of Section 26 of this Article, the Comptroller shall add ten (10%) per cent of the amount of tax finally determined to the tax of such person, and if no tax is assessed against such person, then Five (\$5.00) Dollars shall be certified for collection and collected as income taxes are collected.

Sec. 21. Returns of Fiduciaries:

(a) Every fiduciary (except receivers appointed by authority of law and in possession of part only of the property of a taxpayer) shall make under oath a return for the individual estate or trust as follows:

(1) If acting for an individual whose entire income from whatever source derived as in his charge and the net income of such individual is

One Thousand (\$1,000.00) Dollars or over, if single or if married and not living with husband or wife, or Two Thousand (\$2,000.00) Dollars or over if married and living with husband or wife, or if the gross income is Four Thousand (\$4,000.00) Dollars or over, regardless of the net income.

(2) If acting:

(a) For an estate of a deceased person during the period of administration or settlement, whether or not the income of such estate during such period of administration or settlement is properly paid or credited to any legatee, heir or other beneficiary.

(b) For an estate or trust, the income of which is accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interest.

(c) For an estate or trust the income of which is held for future distribution under the terms of the will or trust, provided that the net income of such estate or trust in paragraph (a), (b) and (c) hereof is One Thousand (\$1,000.00) Dollars or over.

(3) If acting:

(a) For an estate or trust the income of which is to be distributed to the beneficiaries periodically.

(b) As the guardian of an infant whose income is to be held or distributed as the court may direct; provided that any beneficiary of such estate or trust received or is entitled to a distributive share of the income of the estate or trust of One Thousand (\$1,000.00) Dollars or over.

(b) The return made by a fiduciary shall state specifically the items of the gross income and the deductions, exemptions and credits allowed under this Article. Under such regulations as the Comptroller may prescribe, a return made by one or two or more joint fiduciaries shall be a sufficient compliance with the above requirement. The fiduciary shall state under oath or affirmation that he has sufficient knowledge of the affairs of the individual estate or trust for whom or which he acts to enable him to make the return, and that the same is, to the best of his knowledge and belief, true and correct. Fiduciaries required to make return under this Article shall be subject to all the provisions of this Article which apply to individuals.

(c) Every executor, administrator or personal representative of a de-

ceased person shall file a return in all cases where the decedent, if living, would have been required to file such return. Such executor, administrator, or personal representative shall include in such return:

(1) All income received by the decedent during that portion of the year covered by the return preceding the demise of the decedent.

(2) All receipts by him from the estate of the deceased during the year covered by the return, if such receipts would have been taxable as income to the decedent had he survived.

(3) All receipts by him during the year from the estate of the deceased accrued at the date of death of the decedent but not reported by the decedent on the accrual basis, if such receipts would have been taxable as income to the decedent had he survived and made the return.

Sec. 22. Consolidated Returns:

(a) Corporations which are affiliated within the meaning of this Section, may, for any taxable year, make separate returns, or, under regulations prescribed by the Comptroller, make a consolidated return of net income for the purposes of this Article in which case the taxes thereunder shall be computed and determined upon the basis of such return. If a return is made on either of such basis, all returns thereafter shall be made upon the same basis unless permission to change the basis is granted by the Comptroller.

(b) In any case in which a tax is assessed upon the basis of a consolidated return, the total tax shall be computed in the first instance as a unit and shall then be assessed upon the respective affiliated corporations in such proportions as may be agreed upon among them, or in the absence of such agreement, then on the basis of the income properly assignable to each.

(c) For the purpose of this Section, two or more corporations shall be deemed to be affiliated:

(1) If one corporation owns at least ninety-five per cent of the voting stock of the other or others, or

(2) If at least ninety-five per cent of the voting stock of two or more corporations is owned by the same interests.

(d) In any case of two or more related trades or businesses liable to taxation under this Article owned or

controlled directly or indirectly by the same interests, the Comptroller may, and at the request of the taxpayer shall, if necessary in order to make an accurate distribution or apportionment of gains, profits, income, deductions, or capital between or among such related trades or businesses, consolidate the accounts of such related trades or businesses.

(e) Where the Comptroller has reason to believe that any taxpayer so conducts the trade or business as either directly or indirectly to distort his true net income and the net income properly attributable to the State, whether by the arbitrary shifting of income, through price fixing, charges for service or otherwise, whereby the net income is arbitrarily assigned to one or another unit in a group of taxpayers carrying on business under a substantially common control, he may require such facts as he deems necessary for the proper computation of the entire net income and the net income properly attributable to the State, and in determining the same the Comptroller shall have regard to the fair profits which would normally arise from the conduct of the trade or business.

Sec. 23. Informational Returns:

(a) Every individual, partnership, corporation, joint stock company, association, or insurance company, being a resident or having a place of business in this State, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the State or of any political subdivision of the State, having the control, receipt, custody, disposal or payment of interest (other than interest coupons payable to bearer), rent salaries, wages, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable annual or periodical gains, profits and income, amounting to One Thousand (\$1,000.00) Dollars or over, paid or payable during any year to any resident of the State of Texas shall make returns thereof under oath (or affirmation) to the Comptroller, under such regulations and in such form and manner and to such extent as may be prescribed by him. No deductions shall be allowed to any taxpayer under Section 11, sub-section a of this Article unless there is reported the name,

address, and amount paid to each person as provided therein.

(b) Every partnership having a place of business in this State shall make a return stating specifically the items of its gross income and the deductions allowed by this Article and shall include in the return the names and addresses of the individuals who would be entitled to share in the net income if distributed, and the amount of the distributive share of each individual. The return shall be sworn to by any one of the partners.

(c) Every fiduciary shall make, under oath, a return for the individual, estate or trust for whom or for which he acts, if the net income whereof, distributed or distributable to beneficiaries during the year is One Thousand (\$1,000.00) Dollars or over, in which case the fiduciary shall set forth in such return the items of the gross income, the deductions allowed by this Article the net income, the names and addresses of the beneficiaries, the amounts distributed or distributable to each and the amount, if any, lawfully retained by him for future distribution. Such return may be made by one of two or more joint fiduciaries.

Sec. 24. Returns when Accounting Period Changed:

If a taxpayer, with the approval of the Comptroller, changes the basis of computing net income from fiscal year to calendar year, a separate return shall be made for the period between the close of the last fiscal year for which return was made and the following December 31. If the change is made from calendar year to fiscal year, a separate return shall be made for the period between the close of the last calendar year for which return was made and the date designated as the close of the fiscal year within the next calendar year. If the change is made from one fiscal year to another fiscal year, a separate return shall be made for the period between the close of the former fiscal year and the date designated as the close of the new fiscal year, provided, however, that the period shall not be greater than one year.

In all the above cases the net income shall be computed on the basis of such period for which separate return is made, and then shall be paid thereon at the rate for the calendar year in which such period is included; and the exemptions allowed in this

Article shall be reduced respectively to amounts which bear the same ratio to the full exemptions provided for the number of months in such period bears to twelve months.

Sec. 25. Time and Place of Filing Returns:

The taxpayers' returns and informational returns shall be in such form as the Comptroller may from time to time prescribe, and shall be filed with the Comptroller at his main office or at any branch office which he may establish, on or before the fifteenth day of March in each year, if the return is made on the basis of a calendar year, or if the return is made on the basis of a fiscal year, then on or before the fifteenth day of the third month following the close of the fiscal year; provided that in filing the first return under this Article, all taxpayers who keep their books on the basis of a fiscal year shall file with the Comptroller within sixty (60) days after the effective date of this Article, notice of such fact, setting forth therein the date of the close of such fiscal year. In case of sickness, absence or other disability, or whenever in his judgment good cause exists, the Comptroller may allow further time for filing a return, and he shall keep a record of every such extension granted and the reason therefor; provided that no extension of time shall exceed sixty (60) days. There shall be annexed to the return the affidavit or affirmation of the taxpayer making the return to the effect that the statements contained therein are true.

The Comptroller shall cause to be prepared blank forms for the said returns and shall cause them to be distributed throughout the State and to be furnished upon application, but failure to receive or secure the form shall not relieve any taxpayer from the obligation of making any return herein required.

Sec. 26. When Tax is Payable.

(a) Each taxpayer shall, or in cases, where an agent or a guardian or other fiduciary makes a return for the taxpayer on whose behalf he is acting, then the agent, guardian or other fiduciary shall at the time of filing his return, pay to the Comptroller the amount of tax payable hereunder as the same shall appear from the face of the return.

(b) If the time for filing the return shall be extended, such taxpayer or agent or guardian or other fiduciary shall pay, in addition, interest thereon at the rate of six per cent per annum from the time when the return was originally required to be filed to the time of payment.

(c) The tax herein provided may be paid with uncertified check, during such time and under such regulations as the Comptroller shall prescribe, but if a check so received is not paid by the bank on which it is drawn, the taxpayer by whom such tax is rendered shall remain liable for the payment of the tax and for all legal penalties, the same as if such check had not been tendered.

Sec. 27. Failure to File Returns, Supplementary Returns:

If the Comptroller shall be of the opinion that any taxpayer has failed to file a return, or to include in a return filed, either intentionally or through error, items of taxable income, he may require from such taxpayer a return, or a supplementary return, under oath, in such form as he shall prescribe, of all the items of income which the taxpayer received during the year for which the return is made, whether or not taxable under the provisions of this Article. If from a supplementary return, or otherwise the Comptroller finds that any items of income, taxable under this Article have been omitted from the original return, he may require the items so omitted to be disclosed to him, under oath of the taxpayer, and to be added to the original return. Such supplementary return and the correction of the original return, shall not relieve the taxpayer from any of the penalties to which he may be liable under any provision of this Article. The Comptroller may proceed under the provisions of Section 29 of this Article, whether or not he requires a return or a supplementary return under this Section.

Sec. 28. Examination of Returns: Recomputation of Tax; Protest of Additional Assessment, Etc.

(a) As soon as practicable after the return is filed, the Comptroller shall examine it and compute the tax.

(b) If the amount of tax as computed shall be greater than the amount theretofore paid, the excess plus a penalty of ten (10%) per cent of such excess shall be paid by the taxpayer to the Comptroller within

fifteen (15) days after the notice of final assessment of such tax as computed shall be mailed by the Comptroller as provided in Section 29, sub-section (c), paragraph (2) of this Article.

(1) If payment be not made within fifteen (15) days, there shall be added to the amount of the deficiency ten (10%) per cent thereof; and, in addition, interest at the rate of one (1%) per cent per month for each month or fraction of a month, calculated from the date of the notice until paid.

(2) If the understatement is false or fraudulent with intent to evade the tax, the tax on the additional income discovered to be taxable shall be doubled and an additional one (1%) per cent per month shall be added to the amount so due for each month or fraction of a month, calculated from the date the tax was originally due to the date of payment.

(c) If the tax as computed shall be less than the amount theretofore paid, the amount of such excess shall be refunded by the Comptroller out of the undistributed proceeds of the tax in the State Treasury as herein provided.

Sec. 29. Additional Tax:

(a) As used in this Article in respect to a tax imposed by this Article, the term 'deficiency' means

(1) The amount by which the tax imposed by this Article determined by the Comptroller exceeds the amount shown as the tax by the taxpayer upon his return; but the amount so shown on the return shall first be increased by the amounts previously assessed (or collected without assessment) as a deficiency, and decreased by the amounts previously abated, credited, refunded or otherwise repaid in respect to such tax; or

(2) If no amount is shown by the taxpayer upon his return as the tax, or if no return is made by the taxpayer, then the amount by which the tax as determined by the Comptroller exceeds the amount previously assessed (or collected without assessment) as a deficiency; but such amounts previously assessed (or collected without assessment) shall first be decreased by the amounts previously abated, credited, refunded or otherwise repaid in respect of such tax.

(b) Notice of deficiency to taxpayer:

(1) If in the case of any taxpayer, the Comptroller determines that there is a deficiency in respect to the tax imposed by this Article, the Comptroller is authorized to send notice of such deficiency to the taxpayer by registered mail. Within thirty days after such notice is mailed, the taxpayer may file a petition with the Comptroller for a redetermination of the deficiency.

(2) No assessment of a deficiency in respect to the tax imposed by this Article, and no levy or proceeding in court for its collection shall be made, begun or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such thirty-day period, nor, if a petition has been filed with the Comptroller, until his decision has become final.

(c) Collection of deficiency:

(1) If the taxpayer files a petition with the Comptroller, the entire amount redetermined as the deficiency by the decision of the Comptroller which has become final shall be assessed and shall be paid within ten (10) days after such notice of final determination and assessment is mailed by the Comptroller.

(2) If the taxpayer does not file a petition for redetermination with the Comptroller within thirty (30) days after the notice of deficiency is mailed, as provided in sub-section (b) of this Section, the deficiency shall be assessed and shall be paid within ten days after notice and demand from the Comptroller. The Comptroller, if such petition for redetermination is not filed, shall mail notice to such taxpayer of the final assessment of the delinquency immediately after the expiration of the thirty (30) day period allowed for filing such petition.

(d) Hearing on petition for redetermination:

If a petition for a redetermination of a deficiency has been filed by a taxpayer, notice and an opportunity to be heard shall be given to the taxpayer, and after such hearing, a decision shall be made as quickly as practicable.

(e) Redetermination of deficiency:

The Comptroller shall have jurisdiction to redetermine the correct amount of the deficiency even if the amount so determined is greater than the amount of the deficiency, notice of which has been mailed to the tax-

payer, and to determine whether any penalty, additional amount or addition to the tax should be assessed.

Sec. 30. Period of Limitation on Assessment of Income Taxes:

(a) Except as provided in sub-section (b) of this Section, the amount of income taxes imposed by this Article shall be assessed within three (3) years after the return is filed, and no proceeding in court for the collection of such taxes shall be begun after the expiration of such period, unless the taxes shall have been assessed within the time allowed herein.

(b) (1) In the case of a false or fraudulent return with intent to evade the tax, or of a failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment at any time.

(2) Where the assessment of any income tax imposed by this Article has been made within the period of limitation provided in subdivision (a) of this Section, such tax may be collected by warrant and levy as provided in Section 38 of this Article or by a proceeding in court, but only if begun within three years after the assessment of the tax.

Sec. 31. Overpayments and Refunds:

(a) Where there has been an overpayment of any tax imposed by this Article, the amount of such overpayment shall be credited against any income tax then due from the taxpayer, and any balance shall be refunded immediately to the taxpayer in the manner provided in Section 28, sub-section (c) of this Article.

(b) Limitations:

No such credit or refund shall be allowed or made after three years from the time the tax was paid, unless before the expiration of such period a claim therefor is filed by the taxpayer with the Comptroller.

(c) The amount of the credit or refund shall not exceed the portion of the tax paid during the three years immediately preceding the filing of the claim, or if no claim was filed, then during the three years immediately preceding the allowance of the credit or refund.

Sec. 32. Revision and Readjustment by the Comptroller:

A taxpayer may apply to the Comptroller for revision of the tax

assessed against him at any time within one year from the time of the filing of the return or from the date of the notice of the assessment of any additional tax. The Comptroller shall grant a hearing thereon and if it shall be made to appear upon such hearing, by evidence submitted to him or otherwise, that any such computation includes taxes or other charges which could not have been lawfully demanded, or that payment has been illegally made or exacted of any such amount so computed, the Comptroller shall resettle the same according to the law and the facts, and adjust the computation of taxes accordingly, and shall send notice of his determination thereon to the taxpayer.

Sec. 33. Decisions by Comptroller:

Every decision of the Comptroller shall be in writing and notice thereof shall be mailed to the taxpayer by registered mail within ten (10) days and all such decisions shall become final upon the expiration of sixty (60) days after notice of such decisions shall have been mailed to the taxpayer, unless proceedings are thereafter taken for review of the determination as provided for in the succeeding Sections of this Article.

Sec. 34. Review of Decisions of Comptroller:

(a) The determination of the Comptroller upon any application made to him by the taxpayer for a revision and resettlement of any accounts as prescribed by this Article may be reviewed for fraud, gross irregularity, arbitrariness, or manifest error in the interpretation or application of this Article upon appeal made by the taxpayer to the proper court of Travis County, Texas, within sixty (60) days after notice of the determination of the Comptroller has been mailed to the taxpayer in accordance with this Article. Ten (10) days notice of the appeal shall be given to the Comptroller of any hearing on appeal from his decision.

(b) In the event of an appeal from the decision of the Comptroller the taxpayer shall deposit with the Comptroller the full amount of the taxes, interest, and other charges, audited and stated in the determination or decision of the Comptroller, and an undertaking filed with the Comptroller in such amount and with such surety as the Comptroller shall approve, conditioned that the taxpayer will pay all costs and charges which may ac-

crue against him in the prosecution of the case in the event the decision or determination of the Comptroller is affirmed; or, at the option of the taxpayer, the undertaking may be in a sum sufficient to cover the taxes, interest, and other charges audited and stated in the determination or decision, plus the costs and charges which may accrue against him in the prosecution of the case in the event the determination of the Comptroller is affirmed, and in the event the taxpayer enters into such an undertaking sufficient to cover taxes, interest and other charges, plus possible costs of suit, he shall not be required to pay such taxes, interest, and other charges as a condition precedent to the maintenance of his appeal.

Sec. 35. Exclusive Original Jurisdiction of Appeals from the State Comptroller:

The District Court of Travis County, Texas, shall have exclusive original jurisdiction to review on appeal any determination of the Comptroller. It shall be the duty of the clerk of any court rendering a decision affecting an income tax assessment to transmit promptly, without charge, two copies of such decision to the State Comptroller.

Sec. 36. Collection Not to be Stayed:

The collection of income taxes under this Article shall not be stayed by any injunction, writ, or order issued by any court; and no writ, order or process of any kind, staying or preventing the Comptroller from taking any steps or proceedings in the assessment or collection of any income tax whether the same is legally due or not, will be granted by any court or judge; provided that in all cases the taxpayer against whom any income tax shall stand charged shall have the privilege of review and appeal against such tax as provided in this Article.

Sec. 37. Penalties, Additional Taxes and Interest:

(a) If any taxpayer, without intent to evade any tax imposed by this Article, shall fail to file a return of income or pay a tax, if one is due, at the time required by or under the provisions of this Article, but shall voluntarily file a correct return of income and pay the tax within sixty (60) days thereafter, there shall be added to the tax an additional

amount equal to five (5%) per cent thereof, but such additional amount shall in no case be less than One (\$1.00) Dollar, and an additional one (1%) per cent for each month or fraction of a month during which the tax remains unpaid after the date on which return was voluntarily filed.

(b) If any taxpayer fails voluntarily to file a return of income or to pay a tax if one is due within sixty (60) days of the time required by or under the provisions of this Article, there shall be added to the tax an additional amount equal to fifty (50%) per cent thereof, and such increased tax shall be increased by one (1%) per cent for each month or fraction of a month from the time the tax was originally due to the date of payment.

(c) Any individual, corporation or partnership, or any officer or employee of any corporation, or member or employee of any partnership, or any officer or employee thereof, who, without fraudulent intent, shall fail to make, render, sign or verify any return, or to supply any information, within the time required by or under the provisions of this Article, shall be liable to a penalty of not more than Five Hundred (\$500.00) Dollars to be imposed, assessed and collected by the State Comptroller in the same manner as is provided in this Article with regard to income taxes.

(d) Any individual, corporation, or partnership, or any officer or employee of any corporation, or member or employees of any partnership, who with intent to evade any tax or any requirement of this Article, or any lawful requirement of the Comptroller thereunder shall fail to pay the tax, or to make, render, sign or verify any return, or to supply any information within the time required by or under the provisions of this Article, or who, with like intent, shall make, render, sign or verify any false or fraudulent return or statement, or shall supply any false or fraudulent information, shall be liable to a penalty of not more than One Thousand (\$1,000.00) Dollars, to be recovered by the Attorney General in the name of the people by action in any court of competent jurisdiction, and shall also be guilty of a misdemeanor and shall, upon conviction, be fined not to exceed One Thousand (\$1,000.00) Dollars or be imprisoned not to exceed

one year, or both, at the discretion of the court.

(e) Upon making record of its reasons therefor, the Comptroller shall have the power in his discretion to waive or reduce any of the penalties provided in subdivision (b) of Section 28, and subdivisions (a), (b) and (c) of Section 37 of this Article, or to compromise the same.

(f) The Attorney General shall have the power, with the consent of the Comptroller, to compromise any penalty for which he is authorized to bring action under subdivision (d) of this Section.

(g) The penalties provided in subdivisions (c) and (d) of this Section shall be in addition to all other penalties in this Article provided.

(h) The failure to do any act required by or under the provisions of this Article shall be deemed an act committed in part at the office of the State Comptroller in Austin, Texas, Travis County, Texas. The certificate of the Comptroller to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied, as required by or under the provisions of this Article, shall be prima facie evidence that such tax has not been paid, that such return has not been filed, or that such information has not been supplied.

(i) If any taxpayer, who has failed to file a return or has filed an incorrect or insufficient return, and has been notified by the Comptroller of his delinquency, refuses or neglects within twenty (20) days after such notice to file a proper return, or files a fraudulent return, the Comptroller shall determine the income of such taxpayer according to his best information and belief and assess the same at not more than double the amount so determined. The Comptroller, in his discretion, may allow further time for the filing of a return in such case, such additional time not to exceed thirty (30) days.

Sec. 38. Warrant for Collection of Taxes:

If any tax imposed by this Article or any portion of such tax be not paid within sixty (60) days after the same becomes due, the Comptroller shall issue a warrant under his official seal directed to the sheriff of any county of the State commanding him

to levy upon and sell the real and personal property of the person owning the same, found within his county, for the payment of the amount thereof, with the added penalties, interest, and the cost of executing the warrant, and to return such warrant to the Comptroller and pay to him the money collected by virtue thereof within sixty days after the receipt of such warrant. The sheriff shall within five days after the receipt of the warrant file with the clerk of his county a copy thereof, and thereupon the clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant, and in appropriate columns the amount of the tax or portion thereof, and penalties for which the warrant is issued and the date when such copy is filed, and thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real property of chattels real of the person against whom it is issued in the same manner as a judgment duly docketed in the office of such clerk. The said sheriff shall thereupon proceed upon the same in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner. In the discretion of the Comptroller a warrant of like terms, force and effect may be issued and directed to any agent authorized to collect income taxes, and in the execution thereof such agent shall have all the powers conferred by law upon sheriffs, but shall be entitled to no fees or compensation in excess of actual expenses paid in the performance of such duty. If a warrant be returned not satisfied in full, the Comptroller shall have the same remedies to enforce the claim for taxes against the taxpayer as if the people of the State had recovered judgment against the taxpayer for the amount of the tax.

Sec. 39. Action for Recovery of Taxes:

Action may be brought at any time by the Comptroller in the name of the State, to recover the amount of any taxes, penalties, and interest due under this Article.

Sec. 40. Administration of Income Tax Law:

The State Comptroller shall administer and enforce the tax herein imposed, for which purpose he may divide the State into districts in each of which a branch office of the Comptroller may be maintained; provided that in no case shall a county be divided in forming a district.

Sec. 41. Powers of Comptroller:

In addition to all other powers and duties heretofore conferred upon the Comptroller by law, or which may hereafter be conferred upon said Comptroller, and in addition to all other powers and duties specifically set forth in this Article, the Comptroller shall have the powers, authority and duties hereinafter set forth:

(a) Estimate of Taxable Income:

If any taxpayer fails to make a return as herein required, the Comptroller is authorized to make an estimate of the taxable income of such taxpayer from any information in his possession, and assess it in accordance with the provisions of this Article.

(b) Examination of Records, Etc.:

The Comptroller, for the purpose of ascertaining the correctness of any return, or for the purpose of making an estimate of taxable income of any person where information has been obtained, shall have power to examine or to cause to be examined, by any agent or representative designated by it for that purpose, any books, papers, records, or memoranda bearing upon the matters required in the return, and may require the attendance of any person rendering a return or any officer or employee of such person, firm, corporation, or partnership, and may take testimony and require proof material for its information.

(c) Employees:

The Comptroller shall appoint and remove such tax assistants, agents, statisticians, experts, or other assistants or employees as may be necessary for the exercise of the powers and duties conferred upon the Comptroller by this Article, and the Comptroller shall prescribe their duties and fix their compensation, such compensation not to exceed in the aggregate the sum appropriated therefor by the Legislature. The Comptroller shall have the authority to appoint such district supervisors

and other employees as shall be necessary to the enforcement of this Article, under the provisions of Section 41 hereof, and shall have the power to transfer such employees from one district to another; provided that in so far as practicable, preference shall be given in the appointment of such employees to persons resident in the particular district.

(1) The Comptroller may require such of the officers, agents, and employees as he may designate to give bond for the faithful performance of their duties in such sum and with such sureties as he may determine, and all premiums on such bonds shall be paid by the Comptroller out of moneys appropriated for the purpose of this Article.

(d) Oaths:

The Comptroller, and such officers, agents or representatives as he may from time to time designate, shall have the power to administer an oath to any person, or to take the acknowledgment of any person in respect to any income tax report or return required by or pursuant to this Article, or the rules and regulations of the Comptroller.

(e) Rules and Regulations:

The Comptroller shall make such reasonable rules and regulations, not inconsistent with this Article, as may be necessary for the exercise of its powers and performance of its duties under this Article; such rules and regulations prescribed by the Comptroller pursuant to this Article shall have the full force of law, and the findings of fact of the Comptroller shall be final and conclusive and shall not be subject to review, change, or modification in the absence of fraud. In so far as practicable, the rules and regulations of the Internal Revenue Department of the Federal Government shall be conformed to by the State Comptroller in issuing its rules and regulations under this Article.

(f) Blanks, Forms, etc.

The Comptroller shall prescribe the form of blanks, reports, and such other forms as he may deem necessary under the provisions of this Article for the proper enforcement thereof.

(g) Publication of statistics

The Comptroller shall compile and publish annually such statistics as

are reasonably available, with respect to the operations of this Article, including amounts collected, classifications of taxpayers, income and exemptions, and such other facts as are deemed pertinent and valuable.

(h) Agents to collect.

The Comptroller is authorized at his discretion to designate agents for the purpose of collecting income taxes and shall require from them reasonable bond, the premium on such bonds to be paid out of the moneys appropriated for the purposes of this Article.

Sec. 42. Secrecy Required of Officials; Penalty for Violation:

(a) Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the Comptroller, agent, clerk or other officer or employee to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required under this Article. The officers charged with the custody of such reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the Comptroller in an action or proceeding under the provisions of this Article to which he is a party, or on behalf of any party to any action or proceeding under the provisions of this Act when the reports or facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit in evidence, so much of said reports or of the facts shown thereby, as are pertinent to the action or proceeding, and no more. Nothing herein shall be construed to prohibit the delivery to a taxpayer or his duly authorized representative a certified copy of any return or report filed in connection with his tax nor to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, or the inspection by the Attorney General or other legal representatives of the State of the report or return of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted in accordance with the provisions of Section 38 or Sec-

tion 39 of this Article. Reports and returns shall be preserved for three years and thereafter until the Comptroller orders them to be destroyed.

(b) Any offense against Sub-section (a) of this Section shall be punished by a fine not exceeding One Thousand (\$1,000) Dollars or by imprisonment not exceeding one year, or both, at the discretion of the Court, and if the offender be an officer or employee of the State he shall be dismissed from office or service and be incapable of holding any public office in this State for a period of five years thereafter.

(c) Notwithstanding the provisions of this Section, the Comptroller may permit the Commissioner of Internal Revenue of the United States, or the proper officer of any State imposing an income tax upon the income of individuals, partnerships, corporations, and fiduciaries, or the authorized agent or representative of either such officer, to inspect the income tax return of any taxpayer, or may furnish to such officer or his authorized representative an abstract of the return of income of any taxpayer or supply him with information concerning any item of income contained in any return, or disclosed by the report of any investigation of the income or return of income of any such taxpayer; but such permission shall be granted or such information furnished to such officer or his representative only if the statutes of the United States or of such other State, as the case may be, grant substantially similar privileges to the proper officer of this State charged with the administration of the income tax law of this State.

Sec. 43. Disposal of Tax:

(a) All revenues collected by the Comptroller under this Article shall be deposited daily with the State Treasurer, and shall be credited by him to the funds provided as follows:

(1) Five per cent (5%) of the tax, penalties, and interest provided in this Article and collected by the Comptroller within one year from the effective date of this Article, and three per cent (3%) thereafter shall be deposited by the State Treasurer in a special fund and may be expended, or so much thereof as may be necessary, by the Comptroller in the administration and enforcement

of this Article, and the same is hereby appropriated.

(2) Five per cent (5%) of the revenue collected from the tax, penalties, and interest provided herein, exclusive of filing fees, shall be deposited in a reserve fund for the payment of refunds to which taxpayers are entitled under this Article, and the same is hereby appropriated for that purpose.

(3) The balance of such receipts shall be allocated as hereinafter provided in this Act.

(b) If at the end of any State fiscal year, there is in the reserve fund for refunds provided in Subsection (a), paragraph (2) of this Section, a sum in excess of Two Hundred and Fifty Thousand (\$250,000) Dollars, such excess shall be transferred to the General Revenue Fund.

(c) Refunds due to taxpayers under this Act shall be paid out of said reserve fund provided herein; provided that such refunds shall be made as provided in Section 28, Subsection (c) of this Article; provided, further, that if at any time the reserve fund is exhausted and there are no funds with which to pay refunds lawfully due, then such refunds shall be paid in the chronological order of their allowance by the Comptroller out of the funds first accruing to said fund.

Sec. 44. Contract to Assume Income Tax Illegal:

It shall be unlawful for any person to agree or contract directly or indirectly to pay or assume or bear the burden of any tax payable by any taxpayer under the provisions of this Article. Any such contract or agreement shall be null and void and shall not be enforced or given effect by any court.

Sec. 45. Appropriations:

To carry into effect the provisions of this Section there is hereby appropriated out of any moneys in the Treasury not otherwise appropriated the sum of Fifty Thousand (\$50,000) Dollars or so much of said amount as may be needed by the Comptroller for the enforcement of this Article. Salaries payable hereunder shall not exceed the salaries in each classification as set out in the general appropriation for the Comptroller's Department. Any unexpended portions in excess of Twen-

ty-five Thousand (\$25,000) Dollars of the fund set aside for use of the Comptroller in Section 43 of this Article shall on the first day of January, 1943, and on the first day of January of each year thereafter revert to the General Revenue Fund; provided that the Twenty-five Thousand (\$25,000) Dollars herein referred to shall be retained in the fund on the first day of January, 1943, and each year thereafter in order to supply funds for use in the administration and enforcement of this Article until such moneys are deposited in this fund when taxes become payable."

Question—Shall the amendment (81) be adopted?

Senator Moore offered the following amendment to the amendment:

(82)

Amend the Metcalfe amendment by adding at the end of Section 18, subdivision A, a new paragraph known as paragraph 5, and reading as follows:

"5. In the case of an individual all sums paid by him or her for life insurance premiums, accident insurance premiums, health insurance premiums or annuity premiums."

The amendment to the amendment was adopted.

Senator Van Zandt offered the following amendment to the amendment:

(83)

Amend Metcalfe amendment by adding a new Section at the proper place.

"Section The right of the State to enforce the collection and require the payment of all taxes levied in this Article or taxes accruing thereunder prior to December 31, 1942 is hereby preserved, including the enforcement of the collection thereof by civil suit, which remedy is hereby specifically authorized and fully provided for; and the liability of any person, agent, receiver, trustee, firm, corporation, association or co-partnership for the payment of taxes levied in this Article including any interest and penalty due thereon, that will become due or may hereafter become due, shall not be changed, altered or modified except as stated in this Article and other than the remedies in this Section provided; and the provision

of this Article shall become inoperative at midnight, December 31, 1942."

VAN ZANDT,
COTTEN.

Senator Lovelady moved to table the amendment to the amendment.

Yeas and nays were demanded, and the motion to table was lost by the following vote:

Yeas—8

Beck	Lovelady
Formby	Mauritz
Hill	Metcalfe
Isbell	Sulak

Nays—20

Aikin	Martin
Brownlee	Moffett
Chadick	Moore
Cotten	Shivers
Fain	Stone
Graves	Van Zandt
Hazlewood	Vick
Kelley	Weinert
Lanning	Winfield
Lemens	York

Absent—Excused

Spears

Paired

Senator Ramsey (present), who would vote "yea" with Senator Smith (absent), who would vote "nay."

Senator Metcalfe offered the following amendment to amendment No. 83:

(84)

Amend Van Zandt and Cotten amendment by striking out the figure "1942" and insert in lieu thereof "1943."

Senator Cotten moved to table the amendment (84).

Yeas and nays were demanded, and the motion to table prevailed by the following vote:

Yeas—16

Brownlee	Moore
Cotten	Shivers
Fain	Stone
Hazlewood	Van Zandt
Kelley	Vick
Lemens	Weinert
Martin	Winfield
Moffett	York

Nays—12

Aikin	Chadick
Beck	Formby

Graves	Lovelady
Hill	Mauritz
Isbell	Metcalfe
Lanning	Sulak

Absent—Excused

Spears

Paired

Senator Ramsey (present), who would vote "nay" with Senator Smith (absent), who would vote "yea."

The question then recurred on the adoption of amendment (83) to the amendment (81):

Yeas and nays were demanded, and the amendment was adopted by the following vote:

Yeas—18

Aikin	Moffett
Brownlee	Moore
Cotten	Shivers
Fain	Stone
Hazlewood	Van Zandt
Kelley	Vick
Lanning	Weinert
Lemens	Winfield
Martin	York

Nays—10

Beck	Isbell
Chadick	Lovelady
Formby	Mauritz
Graves	Metcalfe
Hill	Sulak

Absent—Excused

Spears

Paired

Senator Ramsey (present), who would vote "nay" with Senator Smith (absent), who would vote "yea."

Senator Aikin moved that the Senate recess to 2:00 o'clock p. m. today.

The motion was lost by the following vote:

Yeas—9

Aikin	Lemens
Cotten	Mauritz
Graves	Sulak
Isbell	Van Zandt
Lanning	

Nays—20

Beck	Formby
Brownlee	Hazlewood
Chadick	Hill
Fain	Kelley

Lovelady	Shivers
Martin	Stone
Metcalfe	Vick
Moffett	Weinert
Moore	Winfield
Ramsey	York

Absent—Excused

Smith	Spears
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Senator Shivers moved that the Senate recess to 10:00 o'clock a. m. Monday, April 28, 1941.

The motion was lost by the following vote:

Yeas—14

Beck	Ramsey
Brownlee	Shivers
Chadick	Stone
Fain	Vick
Kelley	Weinert
Martin	Winfield
Moore	York

Nays—15

Aikin	Lemens
Cotten	Lovelady
Formby	Mauritz
Graves	Metcalfe
Hazlewood	Moffett
Hill	Sulak
Isbell	Van Zandt
Lanning	

Absent—Excused

Smith	Spears
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Senator Metcalfe offered the following amendment to the amendment (81):

(85)

Amend Metcalfe amendment to committee substitute for H. B. No. 8, page 29 of the mimeographed amendment, by striking out sub-section (b) of Section 20, and insert in lieu thereof the following:

"(b) If a husband and wife living together have an aggregate net income of Two Thousand (\$2,000.00) Dollars, or over, or an aggregate gross income of Four Thousand (\$4,000.00) Dollars, or over, such husband and wife may file separate returns covering one-half ($\frac{1}{2}$) of such aggregate net income, or one-half ($\frac{1}{2}$) of such aggregate gross income."

The amendment was adopted.

Senator Metcalfe offered the following amendment to the amendment (81):

(86)

Amend Metcalfe amendment to committee substitute for H. B. No. 8, page 52 of the mimeographed amendment, by adding after Section 44 a new Section to be numbered 45, and renumber the subsequent Section accordingly, said new Section to be and read as follows:

"45. It is further provided that nothing herein contained shall in any wise alter, change or modify any law of this State with reference to the status of community property or community property rights."

The amendment to the amendment was adopted.

Senator Brownlee offered the following amendment to the amendment (81):

(87)

Amend the Metcalfe amendment to the committee substitute of H. B. No. 8, by adding the following:

"Provided that all taxes due hereunder shall be credited with any amount paid in County and State ad valorem taxes by the taxpayer hereunder."

BROWNLEE,
WINFIELD.

Senator Metcalfe moved to table the amendment to the amendment.

Yeas and nays were demanded, and the motion to table prevailed by the following vote:

Yeas—19

Aikin	Lovelady
Chadick	Martin
Cotten	Mauritz
Formby	Metcalfe
Graves	Moffett
Hazlewood	Stone
Hill	Sulak
Isbell	Van Zandt
Lanning	Vick
Lemens	

Nays—9

Beck	Shivers
Brownlee	Weinert
Fain	Winfield
Kelley	York
Moore	

Absent—Excused

Spears

Paired

Senator Ramsey (present), who would vote "yea" with Senator Smith (absent), who would vote "nay."

Senator Beck offered the following amendment to the amendment (81):

(88)

Amend Metcalfe amendment by "halving each figure in subdivisions (a) and (b) of Section 20, page 29."

Senator Metcalfe moved to table the amendment.

Yeas and nays were demanded, and the motion to table was lost by the following vote:

Yeas—12

Aikin	Lemens
Formby	Martin
Graves	Mauritz
Hazlewood	Metcalfe
Kelley	Stone
Lanning	Sulak

Nays—14

Beck	Moore
Brownlee	Shivers
Chadick	Van Zandt
Cotten	Vick
Fain	Weinert
Isbell	Winfield
Lovelady	York

Absent

Hill Moffett

Absent—Excused

Spears

Paired

Senator Ramsey (present), who would vote "yea" with Senator Smith (absent), who would vote "nay."

The question then recurred on the adoption of the amendment to the amendment.

The amendment to the amendment was adopted.

Senator Lemens offered the following amendment to the amendment (81):

(89)

Amend the Metcalfe amendment to H. B. No. 8, page 9, of the mimeographed copy, by adding at the end of Section 4 a new paragraph to be known as paragraph "n," which said paragraph shall read as follows:

"(n) Domestic building and loan associations substantially all the business of which is confined to making loans to members."

Question—Shall the amendment to the amendment be adopted?

Yeas and nays were demanded, and the amendment to the amendment was lost by the following vote:

Yeas—11

Aikin	Moffett
Hazlewood	Stone
Lanning	Sulak
Lemens	Vick
Mauritz	York
Metcalfe	

Nays—18

Beck	Kelley
Brownlee	Lovelady
Chadick	Martin
Cotten	Moore
Fain	Ramsey
Formby	Shivers
Graves	Van Zandt
Hill	Weinert
Isbell	Winfield

Absent—Excused

Smith Spears

Senator Stone offered the following amendment to the amendment (81):

(90)

Amend the Metcalfe amendment to H. B. No. 8, by adding on page 17, Section 10, a new sub-section to be known as (k), to read as follows:

"(k) In case of insurance companies other than life, the net additions, if any, made to reserve funds required by law to be set up, and all sums paid during the year on all policy contracts."

The amendment to the amendment was adopted.

Senator York moved that the Senate recess to 10:00 o'clock a. m. Monday, April 28, 1941.

The motion was lost by the following vote:

Yeas—12

Beck	Moore
Brownlee	Shivers
Chadick	Stone
Kelley	Weinert
Martin	Winfield
Moffett	York

Nays—17

Aikin	Graves
Cotten	Hazlewood
Fain	Hill
Formby	Isbell

Lanning	Ramsey
Lemens	Sulak
Lovelady	Van Zandt
Mauritz	Vick
Metcalf	

Absent—Excused

Smith	Spears
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Senator Fain offered the following amendment to the amendment (81):

(91)

Amend Metcalfe amendment by striking out the figures "2%" wherever it appears in said amendment and substitute therefor the figures "1%."

Senator Metcalfe moved to table the amendment to the amendment.

Yeas and nays were demanded, and the motion to table prevailed by the following vote:

Yeas—16

Chadick	Lemens
Cotten	Lovelady
Formby	Mauritz
Graves	Metcalf
Hazlewood	Moffett
Hill	Sulak
Isbell	Van Zandt
Lanning	Vick

Nays—12

Aikin	Moore
Beck	Shivers
Brownlee	Stone
Fain	Weinert
Kelley	Winfield
Martin	York

Absent—Excused

Spears

Paired

Senator Ramsey (present), who would vote "yea" with Senator Smith (absent), who would vote "nay."

Senator Cotten moved that the previous question be ordered on the adoption of the amendment (81) by Senator Metcalfe, and the motion was duly seconded.

Yeas and nays were demanded, and the Senate refused to order the main question at this time by the following vote:

Yeas—14

Cotten	Isbell
Formby	Lanning
Graves	Lemens
Hazlewood	Lovelady
Hill	Mauritz

Metcalf	Van Zandt
Ramsey	Vick

Nays—15

Aikin	Moore
Beck	Shivers
Brownlee	Stone
Chadick	Sulak
Fain	Weinert
Kelley	Winfield
Martin	York
Moffett	

Absent—Excused

Smith	Spears
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Senator Martin moved that the Senate recess to 10:00 o'clock a. m. Monday, April 28, 1941.

The motion was lost by the following vote:

Yeas—14

Beck	Moore
Brownlee	Shivers
Chadick	Stone
Fain	Sulak
Kelley	Weinert
Martin	Winfield
Moffett	York

Nays—15

Aikin	Lemens
Cotten	Lovelady
Formby	Mauritz
Graves	Metcalf
Hazlewood	Ramsey
Hill	Van Zandt
Isbell	Vick
Lanning	

Absent—Excused

Smith	Spears
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Senator Lanning moved the previous question on the amendment (81) by Senator Metcalfe.

The motion was duly seconded.

Yeas and nays were demanded, and the Senate refused to order the main question at this time by the following vote:

Yeas—14

Cotten	Lemens
Formby	Lovelady
Graves	Mauritz
Hazlewood	Metcalf
Hill	Ramsey
Isbell	Van Zandt
Lanning	Vick

Nays—15

Aikin	Brownlee
Beck	Chadick

Fain	Stone
Kelley	Sulak
Martin	Weinert
Moffett	Winfield
Moore	York
Shivers	

Absent—Excused

Smith	Spears
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Senator Shivers offered the following amendment to the amendment (81):

(92)

Amend Metcalfe amendment, page 14, Section 1, by striking out the words, "used in the trade or business."

Yeas and nays were demanded, and the amendment was rejected by the following vote:

Yeas—10

Beck	Shivers
Brownlee	Stone
Fain	Weinert
Moffett	Winfield
Moore	York

Nays—18

Aikin	Lanning
Chadick	Lemens
Cotten	Lovelady
Formby	Martin
Graves	Mauritz
Hazlewood	Metcalfe
Hill	Sulak
Isbell	Van Zandt
Kelley	Vick

Absent—Excused

Spears

Paired

Senator Ramsey (present), who would vote "nay" with Senator Smith (absent), who would vote "yea."

Senator Shivers offered the following amendment to the amendment (81):

(93)

Amend Metcalfe amendment, page 43, Section 35, by striking out the first sentence thereof and substituting in lieu thereof the following: "The district court of the taxpayer's county of residence shall have exclusive original jurisdiction to recover on appeal any determination of the Comptroller."

The amendment was adopted.

Senator Shivers offered the following amendment to the amendment (81):

(94)

Amend Metcalfe amendment, page 43 by striking out "Section 36."

The amendment to the amendment was adopted.

Senator Shivers offered the following amendment to the amendment (81):

(95)

Amend Metcalfe amendment, page 45, Section (h) by striking out said Section.

The amendment to the amendment was adopted.

Senator Shivers offered the following amendment to the amendment (81):

(96)

Amend Metcalfe amendment, page 49, Section 42 (a), lines 1 and 2 by striking out the words, "or as otherwise provided by law."

The amendment to the amendment was adopted.

Senator Shivers offered the following amendment to the amendment (81):

(97)

Amend the Metcalfe amendment by adding thereto a new Section to be numbered ..., to read as follows:

"Provided, further, that there shall be allowed as a deduction in computing the net income all drugs, medicines, hospital and doctors fees, and all other expenses incurred by a taxpayer in connection with any sickness to any member of his or her family, including also, all funeral expenses incurred by any taxpayer."

Senator Metcalfe moved to table the amendment to the amendment.

Yeas and nays were demanded, and the motion to table was lost by the following vote:

Yeas—12

Chadick	Isbell
Cotten	Lanning
Formby	Lovelady
Graves	Mauritz
Hazlewood	Metcalfe
Hill	Van Zandt

Nays—17

Aikin	Brownlee
Beck	Fain

Kelley	Stone
Lemens	Sulak
Martin	Vick
Moffett	Weinert
Moore	Winfield
Ramsey	York
Shivers	

Absent—Excused

Smith	Spears
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Question recurring on the amendment to the amendment, it was adopted.

Senator Shivers offered the following amendment to the amendment (81):

(98)

Amend the Metcalfe amendment by adding thereto a new Section to be numbered ..., to read as follows:

"Provided, further, that there shall be allowed, in computing the net income, all foods of every kind and description, purchased and paid for by any taxpayer during the taxable year for which the tax is computed."

Senator Metcalfe moved to table the amendment.

Yeas and nays were demanded, and the motion to table prevailed by the following vote:

Yeas—14

Chadick	Lovelady
Formby	Mauritz
Graves	Metcalfe
Hill	Moffett
Isbell	Sulak
Lanning	Van Zandt
Lemens	Vick

Nays—13

Aikin	Moore
Beck	Shivers
Brownlee	Stone
Cotten	Weinert
Fain	Winfield
Kelley	York
Martin	

Absent

Hazlewood

Absent—Excused

Spears

Paired

Senator Ramsey (present), who would vote "yea" with Senator Smith (absent), who would vote "nay."

Senator Shivers offered the following amendment to the amendment (81):

(99)

Amend Metcalfe amendment by adding a new Section to read as follows:

"Provided that any funds expended for milk or milk products by a taxpayer shall be allowed as a deduction before computing net income."

(President Pro Tempore Cotten in the Chair.)

Senator Metcalfe moved to table the amendment to the amendment.

Yeas and nays were demanded, and the motion to table was lost by the following vote:

Yeas—14

Formby	Lovelady
Graves	Mauritz
Hazlewood	Metcalfe
Hill	Moffett
Isbell	Sulak
Lanning	Van Zandt
Lemens	Vick

Nays—14

Aikin	Martin
Beck	Moore
Brownlee	Shivers
Chadick	Stone
Cotten	Weinert
Fain	Winfield
Kelley	York

Absent

Ramsey

Absent—Excused

Smith	Spears
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Question then recurring on the amendment to the amendment, yeas and nays were demanded.

The amendment to the amendment was adopted by the following vote:

Yeas—15

Aikin	Martin
Beck	Moore
Brownlee	Shivers
Cotten	Stone
Fain	Weinert
Formby	Winfield
Hazlewood	York
Kelley	

Nays—13

Chadick	Isbell
Graves	Lanning
Hill	Lemens

Lovelady	Sulak
Mauritz	Van Zandt
Metcalf	Vick
Moffett	

Absent—Excused

Spears

Paired

Senator Ramsey (present), who would vote "nay" with Senator Smith (absent), who would vote "yea."

Senator Martin moved that the Senate recess to 10:00 o'clock a. m. Monday, April 28, 1941.

The motion was lost by the following vote:

Yeas—13

Beck	Moore
Brownlee	Shivers
Chadick	Stone
Fain	Weinert
Kelley	Winfield
Martin	York
Moffett	

Nays—15

Aikin	Lemens
Cotten	Lovelady
Formby	Mauritz
Graves	Metcalf
Hazlewood	Sulak
Hill	Van Zandt
Isbell	Vick
Lanning	

Absent—Excused

Spears

Paired

Senator Ramsey (present), who would vote "nay" with Senator Smith (absent), who would vote "yea."

Senator Hazlewood moved to reconsider the vote by which amendment (99) was adopted.

Yeas and nays were demanded, and the motion to reconsider prevailed by the following vote:

Yeas—16

Aikin	Lemens
Chadick	Lovelady
Formby	Mauritz
Graves	Metcalf
Hazlewood	Moffett
Hill	Sulak
Isbell	Van Zandt
Lanning	Vick

Nays—12

Beck	Moore
Brownlee	Shivers
Cotten	Stone
Fain	Weinert
Kelley	Winfield
Martin	York

Absent—Excused

Spears

Paired

Senator Ramsey (present), who would vote "yea" with Senator Smith (absent), who would vote "nay."

By unanimous consent, Senator Shivers withdrew amendment (99).

Senator Shivers offered the following amendment to the amendment (81):

(100)

Amend Metcalf amendment by adding a new Section to read as follows:

"Provided that any funds expended for milk or milk products by a taxpayer for use by his or her family shall be allowed as a deduction before computing net income."

Senator Hill moved the previous question on the pending amendments, and the motion was duly seconded.

The Senate refused to order the main question at this time by the following vote:

Yeas—13

Cotten	Lovelady
Formby	Mauritz
Graves	Metcalf
Hazlewood	Sulak
Hill	Van Zandt
Lanning	Vick
Lemens	

Nays—15

Aikin	Moffett
Beck	Moore
Brownlee	Shivers
Chadick	Stone
Fain	Weinert
Isbell	Winfield
Kelley	York
Martin	

Absent—Excused

Spears

Paired

Senator Ramsey, (present), who would vote "yea" with Senator Smith (absent), who would vote "nay."

Question—Shall amendment (100) to the amendment (81) be adopted?

Yeas and nays were demanded, and the amendment to the amendment was adopted by the following vote:

Yeas—21

Aikin	Martin
Beck	Moffett
Brownlee	Moore
Chadick	Shivers
Cotten	Stone
Fain	Sulak
Formby	Vick
Hazlewood	Weinert
Isbell	Winfield
Kelley	York
Lemens	

Nays—7

Graves	Mauritz
Hill	Metcalf
Lanning	Van Zandt
Lovelady	

Absent—Excused

Spears

Paired

Senator Ramsey (present), who would vote "nay" with Senator Smith (absent), who would vote "yea."

Senator Isbell moved to reconsider the vote by which the amendment (88) by Senator Beck to the amendment (81) was adopted.

Yeas and nays were demanded, and the motion to reconsider prevailed by the following vote:

Yeas—17

Aikin	Lovelady
Chadick	Martin
Formby	Mauritz
Graves	Metcalf
Hill	Sulak
Isbell	Van Zandt
Kelley	Vick
Lanning	York
Lemens	

Nays—10

Beck	Moore
Brownlee	Shivers
Cotten	Stone
Fain	Weinert
Hazlewood	Winfield

Absent

Moffett

Absent—Excused

Spears

Paired

Senator Ramsey (present), who would vote "yea" with Senator Smith (absent), who would vote "nay."

Question—Shall the amendment (88) to the amendment (81) be adopted?

Yeas and nays were demanded, and the amendment to the amendment was rejected by the following vote:

Yeas—9

Beck	Moore
Brownlee	Shivers
Cotten	Weinert
Fain	Winfield
Hazlewood	

Nays—19

Aikin	Martin
Chadick	Mauritz
Formby	Metcalf
Graves	Ramsey
Hill	Stone
Isbell	Sulak
Kelley	Van Zandt
Lanning	Vick
Lemens	York
Lovelady	

Absent

Moffett

Absent—Excused

Smith

Spears

Senator Shivers offered the following amendment to the amendment (81):

(201)

Amend Metcalf amendment by adding a new Section to read as follows:

"Provided that there shall be allowed in computing net income a deduction of all funds expended for food by the taxpayer for use of his or her family."

Yeas and nays were demanded, and the amendment to the amendment was adopted by the following vote:

Yeas—17

Aikin	Kelley
Beck	Lemens
Brownlee	Martin
Chadick	Moffett
Cotten	Moore
Fain	Shivers

Stone
Sulak
Weinert

Winfield
York

Nays—11

Formby
Graves
Hazlewood
Hill
Isbell
Lanning

Lovelady
Mauritz
Metcalf
Van Zandt
Vick

Absent—Excused

Spears

Paired

Senator Ramsey (present), who would vote "nay" with Senator Smith (absent), who would vote "yea."

Senator Shivers offered the following amendment to the amendment (81):

(102)

Amend Metcalfe amendment by adding a new Section to read as follows:

"Provided that there shall be allowed as a deduction before computing net income all funds expended by a taxpayer for educational purposes for himself or members of his family."

(The President in the Chair.)

Senator Metcalfe moved to table the amendment.

Yeas and nays were demanded, and the motion to table prevailed by the following vote:

Yeas—16

Aikin
Chadick
Formby
Graves
Hazlewood
Hill
Isbell
Lanning

Lemens
Lovelady
Mauritz
Metcalf
Moffett
Sulak
Van Zandt
Vick

Nays—12

Beck
Brownlee
Cotten
Fain
Kelley
Martin

Moore
Shivers
Stone
Weinert
Winfield
York

Absent—Excused

Spears

Paired

Senator Ramsey (present), who would vote "yea" with Senator Smith (absent), who would vote "nay."

Senator Kelley offered the following amendment to the amendment (81):

(103)

Amend Metcalfe amendment by adding a new Section to read as follows:

"Provided that there shall be allowed as a deduction before computing net income all funds expended by a taxpayer for clothing for the use of his or her family."

Senator Metcalfe moved to table the amendment.

Yeas and nays were demanded, and the motion to table prevailed by the following vote:

Yeas—17

Aikin
Chadick
Cotten
Formby
Graves
Hazlewood
Hill
Isbell
Lanning

Lemens
Lovelady
Mauritz
Metcalf
Moffett
Sulak
Van Zandt
Vick

Nays—11

Beck
Brownlee
Fain
Kelley
Martin
Moore

Shivers
Stone
Weinert
Winfield
York

Absent—Excused

Spears

Paired

Senator Ramsey (present), who would vote "yea" with Senator Smith (absent), who would vote "nay."

Senator Fain offered the following amendment to the amendment (81):

(104)

Amend Metcalfe amendment by adding to Section ..., the following:

"Nothing in this Article shall be so construed as to levy an income tax upon any income derived from the manufacture of any article, machine, goods or implements manufactured in this State to be used in national defense."

Senator Lanning moved the previous question on the pending amendments, and the motion was duly seconded.

The Senate refused to order the main question at this time by the following vote:

Yeas—14

Cotten	Lemens
Formby	Lovelady
Graves	Mauritz
Hazlewood	Metcalf
Hill	Sulak
Isbell	Van Zandt
Lanning	Vick

Nays—14

Aikin	Moffett
Beck	Moore
Brownlee	Shivers
Chadick	Stone
Fain	Weinert
Kelley	Winfield
Martin	York

Absent—Excused

Spears

Paired

Senator Ramsey (present), who would vote "yea" with Senator Smith (absent), who would vote "nay."

Senator Fain withdrew the amendment to the amendment.

Question recurring on the amendment (81), yeas and nays were demanded. The amendment was lost by the following vote:

Yeas—13

Chadick	Lovelady
Formby	Mauritz
Graves	Metcalf
Hill	Sulak
Isbell	Van Zandt
Lanning	Vick
Lemens	

Nays—14

Beck	Moffett
Brownlee	Moore
Cotten	Shivers
Fain	Stone
Hazlewood	Weinert
Kelley	Winfield
Martin	York

Paired

Senator Ramsey (present), who would vote "yea" with Senator Smith (absent), who would vote "nay."

Senator Aikin (present), who would vote "yea" with Senator Spears (absent), who would vote "nay."

Senator Mauritz offered the following amendment to the bill:

(105)

Amend substitute for H. B. No. 8 by "increasing by ten (10%) per cent all taxes imposed in Articles 1, 2, 5, 6, 7, 11, 13, 16 and 18."

Senator Moore moved to table the amendment.

Yeas and nays were demanded, and the motion to table was lost by the following vote:

Yeas—10

Fain	Ramsey
Hazlewood	Shivers
Isbell	Stone
Kelley	Weinert
Moore	York

Nays—16

Aikin	Martin
Beck	Mauritz
Brownlee	Metcalf
Chadick	Moffett
Cotten	Sulak
Formby	Van Zandt
Graves	Vick
Hill	Winfield
Lanning	

Absent

Lemens

Absent—Excused

Spears

Paired

Senator Lovelady (present), who would vote "nay" with Senator Smith (absent), who would vote "yea."

Question then recurring on the amendment, yeas and nays were demanded.

The amendment was adopted by the following vote:

Yeas—16

Aikin	Hill
Beck	Lanning
Chadick	Martin
Cotten	Mauritz
Formby	Metcalf
Graves	Moffett

Sulak Vick
Van Zandt Winfield

Nays—11

Brownlee Ramsey
Fain Shivers
Hazlewood Stone
Isbell Weinert
Kelley York
Moore

Lemens Absent

Absent—Excused

Spears

Paired

Senator Lovelady (present), who would vote "yea" with Senator Smith (absent), who would vote "nay."

Senator Hill moved to reconsider the vote by which amendment 105 was adopted.

Senator Metcalfe moved to table the motion to reconsider.

Yeas and nays were demanded, and the motion to table was lost by the following vote:

Yeas—11

Aikin Mauritz
Cotten Metcalfe
Graves Moffett
Hill Sulak
Lanning Vick
Lemens

Nays—17

Beck Moore
Brownlee Ramsey
Chadick Shivers
Fain Stone
Formby Van Zandt
Hazlewood Weinert
Isbell Winfield
Kelley York
Martin

Absent—Excused

Spears

Paired

Senator Lovelady (present), who would vote "yea" with Senator Smith (absent), who would vote "nay."

Senator Hill withdrew the motion to reconsider.

Senator Lovelady offered the following amendment to the bill:

(105)

Amend substitute for H. B. No. 8 by adding a new Article in the mimeo-

graphed copy to be properly numbered to read as follows:

Section 1. That subsection (a) of subsection 41 of Chapter 212 of Acts of the Regular Session of the Forty-second Legislature, be and the same is hereby amended so as to hereafter read as follows:

"41. (a) Cement Distributors. There is hereby imposed a tax of two and one-half (2½) cents on the one hundred (100) pounds, or fractional part thereof, of cement on every person in this State manufacturing or producing in and/or importing cement into this State, and who thereafter distributes, sells or uses; provided, however, no tax shall be paid except on one sale, distribution or use. The person liable for said tax is hereby defined as a 'distributor.' The tax in this Act to be allocated as hereinafter provided."

LOVELADY,
FAIN.

Yeas and nays were demanded, and the amendment was adopted by the following vote:

Yeas—17

Aikin Lemens
Beck Lovelady
Chadick Mauritz
Cotten Metcalfe
Fain Ramsey
Formby Shivers
Hazlewood Sulak
Hill Van Zandt
Lanning

Nays—12

Brownlee Moore
Graves Stone
Isbell Vick
Kelley Weinert
Martin Winfield
Moffett York

Absent—Excused

Smith

Spears

Senator Hazlewood offered the following amendment to the bill:

(106)

Amend Senate committee substitute for H. B. No. 8, by striking therefrom all of 'subsection (a) of Section 1, of Article XIII,' and substituting in lieu thereof the following:

"Section 1. (a) There is hereby levied an occupation tax on every person, agent, receiver, trustee, firm,

association, or copartnership manufacturing or producing carbon black in this State, such tax to be as follows:

1. On 'Class A' carbon black, said tax to be one-tenth of one cent ($1/10$ of 1c) per pound on all such carbon black produced or manufactured where the market value is four (4c) cents per pound or less, and shall be four (4%) per cent of the value of all such carbon black produced or manufactured where the market value is in excess of four (4c) cents per pound.

2. On 'Class B' carbon black said tax to be one-eighth of one cent ($1/8$ of 1c) per pound on all such carbon black produced or manufactured where the market value is four (4c) cents per pound or less, and shall be five (5%) per cent of the value of all such carbon black produced or manufactured where the market value is in excess of four (4c) cents per pound.

'Class A' carbon black as used in this Article means carbon black manufactured or produced by the use of less than two hundred (200) cubic feet of gas per pound of carbon black.

'Class B' carbon black as used in this Article means carbon black manufactured or produced by the use of more than two hundred (200) cubic feet of gas per pound of carbon black.

Should one or more of the classifications herein be declared for any reason to be discriminatory or unconstitutional or for any reason invalid, then there is hereby levied on all carbon black manufactured or produced in this State a tax of one-tenth of one cent ($1/10$ of 1c) per pound on all carbon black produced or manufactured where the market value is four (4c) cents per pound or less, and a tax of four (4%) per cent of the value of all carbon black produced or manufactured where the market value is in excess of four (4c) cents per pound.

The market value of a particular type or grade of carbon black shall be the average sales price of that type or grade of all bona fide sales made during the month on which the tax is being paid less the cost of packing, freight and cartage. If no carbon black of the particular type or grade has been sold during the month for which the tax is being paid then the actual market value of the same shall be the average sales price of that type or grade of all bona fide

sales during the last preceding month in which a bona fide sale of that particular type or grade of carbon black was made, less packing, freight and cartage."

Question—Shall the amendment be adopted?

Yeas and nays were demanded, and the amendment was adopted by the following vote:

Yeas—16

Brownlee	Lovelady
Chadick	Mauritz
Cotten	Moffett
Fain	Stone
Graves	Sulak
Hazlewood	Vick
Kelley	Winfield
Lanning	York

Nays—13

Aikin	Metcalf
Beck	Moore
Formby	Ramsey
Hill	Shivers
Isbell	Van Zandt
Lemens	Weinert
Martin	

Absent—Excused

Smith	Spears
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Motion to Reconsider Vote

Senator York moved to reconsider the vote by which amendment (106) was adopted.

Yeas and nays were demanded, and the motion to reconsider prevailed by the following vote:

Yeas—16

Aikin	Moffett
Beck	Moore
Brownlee	Ramsey
Chadick	Shivers
Formby	Van Zandt
Hill	Weinert
Isbell	Winfield
Martin	York

Nays—13

Cotten	Lovelady
Fain	Mauritz
Graves	Metcalf
Hazlewood	Stone
Kelley	Sulak
Lanning	Vick
Lemens	

Absent—Excused

Smith	Spears
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Question — Shall the amendment (106) be adopted?

Senator Van Zandt moved that the Senate recess to 10:00 o'clock a. m. Monday, April 28, 1941.

The motion was lost by the following vote:

Yeas—11

Beck	Ramsey
Chadick	Stone
Hazlewood	Van Zandt
Lemens	Weinert
Martin	Winfield
Moore	

Nays—18

Aikin	Lanning
Brownlee	Lovelady
Cotten	Mauritz
Fain	Metcalf
Formby	Moffett
Graves	Shivers
Hill	Sulak
Isbell	Vick
Kelley	York

Absent—Excused

Smith	Spears
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Senator Van Zandt moved to table the amendment (106).

Yeas and nays were demanded, and the motion to table was lost by the following vote:

Yeas—13

Aikin	Moore
Beck	Ramsey
Brownlee	Shivers
Formby	Van Zandt
Hill	Weinert
Isbell	York
Metcalf	

Nays—16

Chadick	Lovelady
Cotten	Martin
Fain	Mauritz
Graves	Moffett
Hazlewood	Stone
Kelley	Sulak
Lanning	Vick
Lemens	Winfield

Absent—Excused

Smith	Spears
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The amendment then was adopted by the following vote:

Yeas—15

Brownlee	Fain
Chadick	Graves

Hazlewood	Moffett
Kelley	Stone
Lanning	Sulak
Lemens	Vick
Lovelady	Winfield
Mauritz	

Nays—13

Aikin	Moore
Beck	Ramsey
Formby	Shivers
Hill	Van Zandt
Isbell	Weinert
Martin	York
Metcalf	

Present—Not Voting

Cotten

Absent—Excused

Smith	Spears
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Senator Lanning offered the following amendment to the bill:

(107)

Amend Senate committee substitute for H. B. No. 8, as follows:

Amend Article IV, Section 1, page 16, by striking the words commencing in line 6 and ending in line 9, reading as follows: "(a) one-fortieth (1/40) of one cent per gallon on all liquid hydro-carbon compounds or products extracted and saved, by means of compression, absorption, refrigeration, distillation, or other mechanical methods; provided (b) that"

Yeas and nays were demanded, and the amendment was adopted by the following vote:

Yeas—17

Brownlee	Lemens
Cotten	Mauritz
Fain	Metcalf
Formby	Moffett
Graves	Ramsey
Hazlewood	Stone
Isbell	Vick
Lanning	York

Nays—11

Aikin	Moore
Chadick	Shivers
Hill	Sulak
Kelley	Van Zandt
Lovelady	Winfield
Martin	

Absent

Beck

Absent—Excused

Spears

Paired

Senator Weinert (present), who would vote "nay" with Senator Smith (absent), who would vote "yea."

Motion to Reconsider Vote

Senator Mauritz moved to reconsider the vote by which the substitute amendment by Senator Shivers to Article XIV was adopted.

Question—Shall the motion prevail?

Recess

Senator Brownlee moved that the Senate recess to 10:00 o'clock a. m. Monday, April 28, 1941.

The motion prevailed by the following vote:

Yeas—16

Beck	Moore
Brownlee	Ramsey
Graves	Shivers
Hazlewood	Stone
Kelley	Van Zandt
Lemens	Weinert
Martin	Winfield
Moffett	York

Nays—12

Aikin	Lanning
Chadick	Lovelady
Cotten	Mauritz
Formby	Metcalf
Hill	Sulak
Isbell	Vick

Absent—Excused

Spears

Paired

Senator Fain (present), who would vote "nay" with Senator Smith (absent), who would vote "yea."

The Senate, accordingly, at 6:40 o'clock p. m. took recess until 10:00 o'clock a. m. Monday, April 28, 1941.

APPENDIX

Address of Hon. Thomas J. Holbrook
in Memory of Hon. Walter
C. Woodward

On motion of Senator Metcalfe, and by unanimous consent, the following address of Hon. T. J. Holbrook, delivered at a meeting of the Bar Association of Coleman, Texas, on Friday, April 25, 1941, in memory of Walter C. Woodward, deceased, was ordered printed in the Journal:

May it please the Court, Members of the Bar of the Thirty-fifth Judicial District of Texas, Ladies and Gentlemen:

In one of his great orations, memorializing the Grecians who fell on the field of battle during the Peloponnesian war, it was Pericles who commended the fitness of hearing testimony concerning the character of their illustrious dead. Though doubting the wisdom of attempting to embellish their careers with figures of speech, he laid great emphasis upon their deeds, and declared that such memorials should be held for that, if for nothing more.

It is not difficult to comprehend what was in the mind of the great Athenian, as we gather here at this hour, in the very presence of those who knew and loved him, and in our feeble way attempt to outline something of the imperishable achievements which were attained by one "whom we have long loved, but lost awhile." I believe it was David Copperfield who, when asked to reveal the most important happening in his eventful life, simply said: "I was born." To have been born humbly, as our friend was born; to have lived greatly, as he lived; and to have died nobly, as he died, is the richest heritage which one may bequeath to those who shall come after him.

We have assembled at this hour and in this presence, to commemorate the work, and to mourn the passing, of one whose life fitted admirably into that mould. On the 17th day of last December the Grim Reaper, with inverted torch, touched to dreamless sleep the tired eyes of Walter C. Woodward; and the hosts of evil were never happier, when his sword of righteousness lay broken at the end of a finished career. In this

brief eulogy, I shall not attempt a detailed review of his life. Out here, among the scenes of his childhood and his young manhood, there are those better qualified to pursue that task. I shall be content to touch upon a few high spots, which revealed his character in the public service. Some of the things he accomplished which, if taken with his span of nearly three score years, will entitle him to be ranked with the State's immortals. When death came, we who knew him best in that respect, have with one accord declared in our heart of hearts, that "a tower has fallen—a star has set." We knew that he had been desperately ill, and could claim but a few remaining days, but the sorrow of his passing was none the less poignant to those of us who had shared his friendship and had learned to evaluate his services to this community in which he lived, to his native State, and to our common country. To us, he had become more than a mere personality; and due to his long and valiant battles for truth, had almost become an institution of the State. The blood of ancestral greatness ran through his veins, from both the paternal and maternal side. His father and mother sprang from the best stock of the old South and formed an important link among the pioneers of this section of Texas. To them, he was ever reverent, and credited then with whatever success he may have attained along the way.

In his work as County Attorney of Coleman County, Assistant Attorney General of the State, State Senator, State Life Insurance Commissioner, President of the State Bar Association, and in other high positions of trust and honor, he never forgot the sound teachings of his father, who for so long a time was a nisi prium Judge of this District; and as an expression of the love and affection he held for that father, resigned his seat from the Senate so that his father might have a chance to further serve the commonwealth. Walter's love for his father and others like him, who hewed the way for our present day civilization in these parts, won the respect and admiration of all with whom he came in contact. These traits he bore with dignity to the end; and, in every relation of life, chivalry, justice, and truth, were his ultimate goal line.

Skipping his childhood and his youth, which you, his neighbors, can relate better than I, we note the beginning of his legal career; it commenced here in Coleman, more than a quarter of a century ago, and from that time until the close of his years on earth he adhered to the highest traditions of the profession. From this start on out to the last day, he pursued his course with unusual skill and indomitable energy; not alone in the field of law where human rights were involved, but in the more intricate policies of government which make for the happiness and welfare of the people. Ever keeping in mind the fundamental principles established by the fathers when they set up the mudsills of our Republic, he defended their work with an amazing skill, and with a vigor and courage possessed by few men in this generation. His fine relations with his family would furnish an interesting discourse, but time forbids it here. Aside from his faithful wife and son, the relation which existed between himself and his father was comparable to that between David and his favorite offspring. His undying love for the judiciary grew out of this relation. To Walter, Judge Woodward was a spiritual leveller, and always brought to his mind a true concept of a just judge whose high powers were nobly used.

But he did not rely on this heritage alone, which gave him inspiration. Walter Woodward was one of the hardest, most persistent, and most consistent workers I ever knew. When once he took a task in hand, he went to the very bottom of all that was related to it, in fact, as well as in law; and it mattered not whether the reward at the end of the row was to be large or small. Every ounce of his mind and strength was devoted to the cause, whether in the courthouse, on the rostrum, or in the forum. He searched the deep wells of history to sustain that cause, if he thought it was just, with unrelenting toil. This bar I know will remember the buoyant spirit which moved him in many a hard fought legal battle, and I know will accord him a high place among the counsellors of your day. Those who served with him in the Senate of this State will always recall with pride, his service in matters affecting legislation. We can truthfully say that he would have

shed luster on the councils of any legislative body in the world. When undertaking to do what he believed to be his duty, he did not always pursue the beaten pathway, but went often into the lateral roads of life, where want and misery reign, and where sometimes wayfarers may be found, and with little effort be lifted up to higher and nobler stations. In his kindly way, he spread charity where charity was due; and in no instance did he make capital of these accomplishments. He felt a deep concern for other men's rights, and in his course many a young lawyer was inspired by the touch of his great personality. It is unnecessary to relate the many things he did, in order to perpetuate his name in history. The enduring records of this community, the State, and the nation, will proclaim them as time goes on.

To sum them all up, I would prefer to speak of his character, and what manner of man he was. These are the things which constitute the indestructible heritage which he bequeathed to his family, his friends, and his country. His broad understanding and intricate knowledge of human life in the raw made him an outstanding figure among the men of his time. His sympathies for, and untiring energy spent in behalf of the welfare of the people of this section created in the minds of his neighbors an undying affection for him. When he "went away," his friends and associates everywhere were sorely distressed, and in their heart of hearts said,

"A power was passing from the earth
To breathless nature's dark abyss."

There was something indefinable about Walter Woodward that bound him to his friends with hooks of steel. Always courageous, always so full of life and energy, always carrying the flush of youth full high upon his countenance, and ever bearing a message of cheer to those less fortunate, he was able to interpret as few men could the primitive instincts of human nature.

With high or low, rich or poor, learned or unlearned, he was at home.

"He dwelt with the tribes of the
marsh and moor,

He sate with the board of kings;
He tasted the toil of the burdened
slave

And the joy that triumph brings.

But whether to jungles or palace
hall,
Or white-walled tent he came,
He was brother to king, and soldier,
and slave,
His welcome was the same."

He never knew a dull moment in his whole life, and was neither heavy nor laborious in his dealings with men. You might disagree with him on a given subject, as I often did; but you would always go away from him knowing that here was a man who was unfailingly attractive in his demeanor. Clean in his personal habits, his language and his living, he rose above the common level in that respect; but he never claimed credit for virtues which his conscience did not approve. To some, he seemed over combative at times, but to me he never seemed so. At such moments, he only exhibited that degree of courage, intelligence and persistence, which is often necessary in proving the correctness of his position. To my way of thinking, he never struck below the belt; and in his power to prevent it, never allowed an adversary to do so. He had a physical, moral, and mental courage which sustained him in every contest where an issue had been raised, whether of fact or law; and these elements of strength were his shield and buckler throughout his rather long and useful career.

His rare culture, which was strengthened by study throughout his years, caused his presence to dignify and give poise to any company in which he was found. So fine and gracious were his charming attributes, that he left no one with whom he came in contact doubting, "Here stands a man." Resolute and formidable in maintaining his grounds, after once arriving at an opinion which he believed to be right, he considered it no sin to retract, when convinced he was wrong. But he did not reach a conclusion on any issue quickly, nor without marshalling all the facts pertinent thereto at his command. Having done that, and finally making a decision as to what was right, he followed that course relentlessly until convinced that he was wrong. He never followed the philosophy of Hamlet in soliloquizing with himself, by inquiring whether or not it would be profitable, "To die, to sleep, to wake—to be, or not to be." His was

more of that quality of mind and heart which caused the Bard of Avon to make Polinius say to Laertes his son, "This above all—to thine own self be true, and it must follow as the night the day, thou canst not then be false to any man." To him always came the clear call of Seneca's Pilot, when midst the storm of surging seas, he exclaimed to Neptune:

"Thou may save me if thou wilt,
And may, if thou wilt, destroy me;
But whether or no, I will steer my
rudder true!"

Another thing which caused Walter Woodward to be revered and respected by a great majority of the citizens of our common country, was his intense love for our form of government and its institutions. Long before socialism and the other European "isms" became dominant thoughts among our people, he saw them raising their ugly heads above the horizon. He was always an intense advocate of our constitutional form of government, and combatted every influence which sought to destroy or weaken it. Then, too, he had a profound respect for our four freedoms. Without being orthodox or credal, he possessed a deep religious nature; not of the advertising, shouting, and sentimental type, but of the practical sort. He believed in God, and in the beneficence of His mercies. In this day of doubt, for him there was no doubt. In a day when men say they do not know what lies beyond the grave, he had faith to believe that beyond its portals, "There is a City not made with hands, eternal in the heavens." In a day when for many this hope is hushed in silence, the words of the Nazarene, declaring that life this side the grave is but a preparation for that which lies beyond, were to him a glorious vision of what the future vouchsafes to the faithful. For him, the immortality of the soul was a fact, and not a fiction. The heavens and earth proclaimed it, and he reasoned that it must be so. In substantiation of that faith, he once said to me: "The Great Power that stands back of all truth did not plant this universal longing for another life through tantalizing caprice. For if he did, our hope of immortality is a vain dream, and the spirit of man is annihilated by death like the flame of a candle blown out, and life

itself is a delusion so filled with disappointments that he who dreads to die should fear to live." He was a profound student of the purpose of life here, and of life hereafter.

Aside from the advantages that were his by reason of heredity and home environments, Walter Woodward's ascendancy to high station was not an easy one. The magnitude of his tasks, and the responsibilities which fell to his lot, grew in importance with his allotted time. Each day he lived, found him engaged in more important work than in the preceding one; but he never grew weary. His desire to leave a better world than the one that engaged his attention in early life, followed him to the grave; and all the efforts which he put forth in that direction sprang directly from the forge of a great character. And that, after all, forms the keystone to the arch in every lasting good.

As a private citizen he conceived it to be as much his duty as that of any public official to sustain and maintain this government of ours in all its essential forms; and that accounts for his supreme patriotism, as well as the never-ending interest which he manifested in the perpetuation of its institutions. To him, the form and set-up of the government of our fathers was divinely instituted. It represented and typified the best thought of all the ages; and to his last breath he strove to protect and preserve it from insidious foes from within and without.

As the capstone of the nation's structure, he always looked upon its courts of final resort as the palladium of the people's liberties. Nothing could better illustrate that than the uncompromising stand he took a few years ago when the President surreptitiously sought power to enlarge the Supreme Court, for no better reason than some decisions had been rendered contrary to his liking. The whole move was so contrary to Walter's way of thinking, that he flew in arms against it, as did most of the lawyers throughout the land. His opposition was not placed on the ground of merely enlarging the court—he had another and deeper reason. His objection lay in the manner in which it was sought to be done, and the cause underlying it. He saw in it the danger of breaking the strong-

est arm of the government and substituting therefor a government of men in lieu of a government of laws. Since then, death and retirement have solved the President's problem; but the question of ulterior motives has been removed.

Walter Woodward was an avid reader of history and current events. He had viewed the course pursued by dead nations of the past, and had discerned the seeds of their destruction. The sweep of his imagination had led him to the Acropolis at Athens, and with Pericles he had envisioned the glories and the fall of ancient Greece. He saw Athens go down, together with the last vestige of what was once the most fascinating city in the ancient world. He sat in the galleries of the Roman Senate, and from this vantage point he observed the decay and final eclipse of the Empire and the Republic.

With the blind Milton, he watched the Anglo-Saxon race, as it wrested the great charter from King John at Runnymede, and with it the four cardinal principles, upon which all our liberties rest: Freedom of conscience, freedom of religion, freedom of speech, and freedom of the press. And he fought for the preservation of all of them to his dying day.

Taken all in all, Walter Woodward was a great lawyer, an upright citizen and a true friend. His acts of kindness and courtesy were not extended for the purpose of compensation; and if they were repaid in kind, the person so reciprocating would be blessed by him a thousand fold. His desire was to always impart more of the joy of life than he received from others; and in that way he inevitably reaped a rich reward. In his passing, the people of his native State have suffered an irreparable loss; and the bar and judiciary of this section will miss him more and more as time goes on. There is nothing more that we could say that would add to his golden graces. We are saddened by the fact that his soul has been released from the clay which bound it here; and we can only hope that it has found a better home. With his father and other great immortals with whom he associated in childhood and young manhood, may he find peace enduring in a land of eternal sunshine and unfading flowers for which a life of service had made him worthy.

I know this is not the place to speak of his family life, but I cannot refrain from making this brief reference: Love and affection, one toward another, were the continuous forces which bound that sacred circle in deathless tie; and when the end came, they were at his bedside to bid him farewell. With John Bunyan, as he envisioned the end of a Pilgrim's Progress, they doubtless said: "So Valient-for-truth passed over, and all the trumpets were sounded for him on the other side."

SIXTIETH DAY

Continued

(Monday April 28, 1941)

The Senate met at 10:00 o'clock a. m. and was called to order by the President.

Senate Resolution 113

Senator Beck, by unanimous consent, offered the following resolution at this time:

Whereas, The Honorable H. M. McCastlain, a prominent member of the Arkansas State Legislature from Monroe County, is in the Capitol accompanied by Mrs. McCastlain; and

Whereas, The State of Texas has a great affection for its sister state of Arkansas and admiration for its public officials; therefore, be it

Resolved by the Senate of Texas, That Representative and Mrs. McCastlain be extended the courtesies of the Senate with an invitation to have seats within the bar.

The resolution was read, and by unanimous consent it was considered and adopted at this time.

Senate Resolution 114

Senator Lemens, by unanimous consent, offered the following resolution at this time:

Whereas, The Senior Class of Abbott High School, accompanied by Mr. L. H. Raymer Principal, and Miss Gracie Watson, Sponsor of the Senior Class, is within the Capitol Building; and

Whereas, This distinguished group is making an educational tour of this part of the State; and